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THE

CONSTITUTIONAL

HISTORY OF ENGLAND

FROM THE ACCESSION OF HENRY VII. TO
THE DEATH OF GEORGE II.

VOLUME II.

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FROM THE ACCESSION OF HENRY VII. TO
THE DEATH OF GEORGE II.

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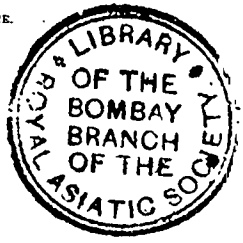
IN THREE VOLUMES.—VOL. II.



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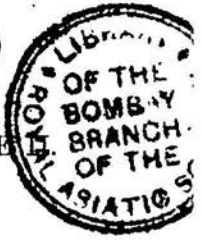

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Declaration of the king after the dissolution.

THE dissolution of a parliament was always to the prerogative what the dispersion of clouds is to the sun. As if in mockery of the transient obstruction, it shone forth as splendid and scorching as before. Even after the exertions of the most popular and intrepid house of commons that had ever met, and after the most important statute that had been passed for some hundred years, Charles found himself in an instant unshackled by his law or his word; once more that absolute king for whom his sycophants

had preached and pleaded, as if awakened from a fearful dream of sounds and sights that such monarchs hate to endure, to the full enjoyment of an unrestrained prerogative. He announced his intentions of government for the future in a long declaration of the causes of the late dissolution of parliament, which, though not without the usual promises to maintain the laws and liberties of the people, gave evident hints that his own interpretation of them must be humbly acquiesced in.[a] This was followed up by a proclamation that he "should account it presumption for any to prescribe a time to him for parliament, the calling, continuing, or dissolving of which was always in his own power; and he should be more inclinable to meet parliament again, when his people should see more clearly into his intents and actions, when such as have bred this interruption shall have received their condign punishment." He afterwards declares that he should "not overcharge his subjects by any more burthens, but satisfy himself with those duties that were received by his father, which he neither could nor would dispense with; but should esteem them unworthy of his protection who should deny them."[b]

Prosecutions of Eliot and others for conduct in parliament.

The king next turned his mind, according to his own and his father's practice, to take vengeance on those who had been most active in their opposition to him. A few days after the dissolution, sir John Eliot, Holles, Selden, Long, Strode, and other eminent members of the commons, were committed, some to the Tower, some to the King's Bench, and their papers seized. Upon suing for their habeas corpus, a return was made that they were detained for notable contempts, and for stirring up sedition, alleged in a warrant under the king's sign manual. Their counsel argued against the sufficiency of this return, as well on the principles and precedents employed in the former case of sir Thomas Darnel and his colleagues, as on the late explicit confirmation of them in the Petition

[a] "It hath so happened," he says, "by the disobedient and seditious carriage of those said ill-affected persons of the house of commons, that we and our regal authority and commandment have been so highly contemned as our kingly office cannot bear, nor any former age can parallel." Rymer, xix. 30.

[b] Rymer, xix. 62.

of Right. The king's counsel endeavoured, by evading the authority of that enactment, to set up anew that alarming pretence to a power of arbitrary imprisonment which the late parliament had meant to silence for ever. "A petition in parliament," said the attorney-general Heath, "is no law, yet it is for the honour and dignity of the king to observe it faithfully; but it is the duty of the people not to stretch it beyond the words and intention of the king. And no other construction can be made of the petition than that it is a confirmation of the ancient liberties and rights of the subjects. So that now the case remains in the same quality and degree as it was before the petition." Thus, by dint of a sophism which turned into ridicule the whole proceedings of the late parliament, he pretended to recite afresh the authorities on which he had formerly relied, in order to prove that one committed by the command of the king or privy council is not bailable. The judges, timid and servile, yet desirous to keep some measures with their own consciences, or looking forward to the wrath of future parliaments, wrote what Whitelock calls "a humble and stout letter" to the king, that they were bound to bail the prisoners; but requested that he would send his direction to do so.[c] The gentlemen in custody were, on this intimation, removed to the Tower; and the king, in a letter to the court, refused permission for them to appear on the day when judgment was to be given. Their restraint was thus protracted through the long vacation; towards the close of which, Charles, sending for two of the judges, told them he was content the prisoners should be bailed, notwithstanding their obstinacy in refusing to present a petition declaring their sorrow for having offended him. In the ensuing Michaelmas term accordingly they were brought before the court, and ordered not only to find bail for the present charge, but sureties for their good behaviour. On

[c] Whitelock's Memorials, p. 14. Whitelock's father was one of the judges of the king's bench: his son takes pains to exculpate him from the charge of too much compliance, and succeeded so well with the long parliament that, when they voted chief-justice Hyde and justice Jones guilty of delay in not bailing these gentlemen, they voted also that Croke and Whitelock were not guilty of it. The proceedings, as we now read them, hardly warrant this favourable distinction. Parl. Hist. ii. 869, 876.

refusing to comply with this requisition, they were remanded to custody.

The attorney-general, dropping the charge against the rest, exhibited an information against sir John Eliot for words uttered in the house; namely, That the council and judges had conspired to trample under foot the liberties of the subject; and against Mr. Denzil Holles and Mr. Valentine for a tumult on the last day of the session; when the speaker, having attempted to adjourn the house by the king's command, had been forcibly held down in the chair by some of the members, while a remonstrance was voted. They pleaded to the court's jurisdiction, because their offences were supposed to be committed in parliament, and consequently not punishable in any other place. This brought forward the great question of privilege, on the determination of which the power of the house of commons, and consequently the character of the English constitution, seemed evidently to depend.

Freedom of speech, being implied in the nature of a representative assembly called to present grievances and suggest remedies, could not stand in need of any special law or privilege to support it. But it was also sanctioned by positive authority. The speaker demands it at the beginning of every parliament among the standing privileges of the house; and it had received a sort of confirmation from the legislature by an act passed in the fourth year of Henry VIII., on occasion of one Strode, who had been prosecuted and imprisoned in the Stannary court, for proposing in parliament some regulations for the tinners in Cornwall; which annuls all that had been done, or might hereafter be done, towards Strode, for any matter relating to the parliament, in words so strong as to form, in the opinion of many lawyers, a general enactment. The judges however held, on the question being privately sent to them by the king, that the statute concerning Strode was a particular act of parliament extending only to him and those who had joined with him to prefer a bill to the commons concerning tinners; but that, although the act were private and extended to them alone, yet it was no more than all other parliament-men, by privilege of the house, ought to have;

namely, freedom of speech concerning matters there debated.[d]

It appeared by a constant series of precedents, the counsel for Eliot and his friends argued, that the liberties and privileges of parliament could only be determined therein, and not by any inferior court; that the judges had often declined to give their opinions on such subjects, alleging that they were beyond their jurisdiction; that the words imputed to Eliot were in the nature of an acousation of persons in power which the commons had an undoubted right to prefer; that no one would venture to complain of grievances in parliament, if he should be subjected to punishment at the discretion of an inferior tribunal; that whatever instances had occurred of punishing the alleged offences of members after a dissolution were but acts of power, which no attempt had hitherto been made to sanction; finally, that the offences imputed might be punished in a future parliament.

The attorney-general replied to the last point, that the king was not bound to wait for another parliament; and, moreover, that the house of commons was not a court of justice, nor had any power to proceed criminally, except by imprisoning its own members. He admitted that the judges had sometimes declined to give their judgment upon matters of privilege; but contended that such cases had happened during the session of parliament, and that it did not follow but that an offence committed in the house might be questioned after a dissolution. He set aside the application of Strode's case, as being a special act of parliament; and dwelt on the precedent of an information preferred in the reign of Mary against certain members for absenting themselves from their duty in parliament, which, though it never came to a conclusion, was not disputed on the ground of right.

The court were unanimous in holding that they had jurisdiction, though the alleged offences were committed in parliament, and that the defendants were bound to answer. The privileges of parliament did not extend,

[d] Strode's act is printed in Hatsell's Precedents, vol. i. p. 80, and in several other books, as well as in the great edition of Statutes of the Realm. It is worded, like many of our ancient laws, so confusedly as to make its application uncertain; but it rather appears to me not to have been intended as a public act.

one of them said, to breaches of the peace, which was the present case; and all offences against the crown, said another, were punishable in the court of king's bench. On the parties refusing to put in any other plea, judgment was given that they should be imprisoned during the king's pleasure, and not released without giving surety for good behaviour, and making submission; that Eliot, as the greatest offender and ringleader, should be fined in 2000*l*., Holles and Valentine to a smaller amount.[e]

Eliot, the most distinguished leader of the popular party, died in the Tower without yielding to the submission required. In the long parliament the commons came to several votes on the illegality of all these proceedings, both as to the delay in granting their habeas corpus, and the overruling their plea to the jurisdiction of the king's bench. But the subject was revived again in a more distant and more tranquil period. In the year 1667 the commons resolved that the act of 4 H. VIII. concerning Strode was a general law, "extending to indemnify all and every the members of both houses of parliament, in all parliaments, for and touching any bills, speaking, reasoning, or declaring of any matter or matters in and concerning the parliament to be communed and treated of, and is a declaratory law of the ancient and necessary rights and privileges of parliament." They resolved also that the judgment given 5 Car. I. against sir John Eliot, Denzil Holles, and Benjamin Valentine, is an illegal judgment, and against the freedom and privilege of parliament. To these resolutions the lords gave their concurrence. And Holles, then become a peer, having brought the record of the king's bench by writ of error before them, they solemnly reversed the judgment.[f] An important decision with respect to our constitutional law, which has established beyond controversy the great privilege of unlimited freedom of speech in parliament; unlimited, I mean, by any authority except that by which the house itself ought always to restrain indecent and disorderly language in its members. It does not, however, appear to be a necessary consequence, from the reversal of this judgment,

[e] State Trials, vol. iii. from Rushworth. [f] Hatsell, p. 212. 242.

that no actions committed in the house by any of its members are punishable in a court of law. The argument in behalf of Holles and Valentine goes indeed to this length; but it was admitted in the debate on the subject in 1667 that their plea to the jurisdiction of the king's bench could not have been supported as to the imputed riot in detaining the speaker in the chair, though the judgment was erroneous in extending to words spoken in parliament. And it is obvious that the house could inflict no adequate punishment in the possible case of treason or felony committed within its walls; nor, if its power of imprisonment be limited to the session, in that of many smaller offences.

The customs on imported merchandises were now rigorously enforced.[g] But the late discussions in parliament, and the growing disposition to probe the legality of all acts of the crown, rendered the merchants more discontented than ever. Richard Chambers, having refused to pay any further duty for a bale of silks than might be required by law, was summoned before the privy council. In the presence of that board he was provoked to exclaim that in no part of the world, not even in Turkey, were the merchants so screwed and wrung as in England. For these hasty words an information was preferred against him in the star-chamber; and the court, being of opinion that the words were intended to make the people believe that his majesty's happy government might be termed Turkish tyranny, manifested their laudable abhorrence of such tyranny by sentencing him to pay a fine of 2000*l.*, and to make a humble submission. Chambers, a sturdy puritan, absolutely refused to subscribe the form of submission tendered to him, and was of course committed to prison. But the court of king's bench admitted him to bail on a habeas corpus; for which, as Whitelock tells us, they were reprimanded by the council.[h]

Prosecution of Chambers for refusing to pay customs.

There were several instances, besides this just men-

[g] Rushworth.

[h] Rushworth; State Trials, iii. 373; Whitelock, p. 12. Chambers applied several times for redress to the long parliament on account of this and subsequent injuries, but seems to have been cruelly neglected, while they were voting large sums to those who had suffered much less, and he died in poverty.

tioned, wherein the judges manifested a more courageous spirit than they were able constantly to preserve; and the odium under which their memory labours for a servile compliance with the court, especially in the case of ship-money, renders it but an act of justice to record those testimonies they occasionally gave of a nobler sense of duty. They unanimously declared, when Charles expressed a desire that Felton, the assassin of the duke of Buckingham, might be put to the rack in order to make him discover his accomplices, that the law of England did not allow the use of torture. This is a remarkable proof that, amidst all the arbitrary principles and arbitrary measures of the time, a truer sense of the inviolability of law had begun to prevail, and that the free constitution of England was working off the impurities with which violence had stained it. For, though it be most certain that the law never recognised the use of torture, there had been many instances of its employment, and even within a few years.[1] In this public assertion of its illegality the judges conferred an eminent service on their country, and doubtless saved the king and his council much additional guilt and infamy which they would have incurred in the course of their career. They declared about the same time, on a reference to them concerning certain disrespectful words alleged to have been spoken by one

Commendable behaviour of judges in some instances.

[1] I have remarked in former passages that the rack was much employed, especially against Roman catholics, under Elizabeth. Those accused of the gunpowder conspiracy were also severely tortured; and others in the reign of James. Coke, in the countess of Shrewsbury's case, 1612, State Trials, ii. 773, mentions it as a privilege of the nobility that "their bodies are not subject to torture in causâ criminis lesæ majestatis." Yet, in his Third Institute, p. 35, he says the rack in the Tower was brought in by the duke of Exeter, under Henry VI., and is therefore familiarly called the duke of Exeter's daughter; and, after quoting Fortescue to prove the practice illegal, concludes—"There is no law to warrant tortures in this land, nor can they be justified by any prescription, being so lately brought in." Bacon observes, in a tract written in 1603, "In the highest cases of treason, torture is used for discovery, and not for evidence," i. 393. See also Miss Aikin's Memoirs of James I., ii. 158.

[This subject has been learnedly elucidated by Mr. Jardine, in his 'Reading on the Use of Torture in the Criminal Law of England, 1837.' The historical facts are very well brought together in this essay; but I cannot agree with this highly-intelligent author in considering the use of torture as having been "lawful as an act of prerogative, though not so by the common and statute law." P. 59. The whole tenor of my own views of the constitution, as developed in this and in former works, forbids my acquiescence in a theory which does, as it seems to me, go the full length of justifying, in a legal sense, the violent proceedings of the crown under all the Plantagenets, Tudors, and Stuarts. 1845.]

Pine against the king, that no words can of themselves amount to treason within the statute of Edward III.[k] They resolved, some years after, that Prynne's, Burton's, and Bastwick's libels against the bishops were no treason.[m] In their old controversy with the ecclesiastical jurisdiction they were inflexibly tenacious. An action having been brought against some members of the high-commission court for false imprisonment, the king, on Laud's remonstrance, sent a message to desire that the suit might not proceed till he should have conversed with the judges. The chief-justice made answer that they were bound by their oaths not to delay the course of justice; and, after a contention before the privy council, the commissioners were compelled to plead.[n]

Such instances of firmness serve to extenuate those unhappy deficiencies which are more notorious in history. Had the judges been as numerous and independent as those of the parliament of Paris, they would not probably have been wanting in equal vigour. But, holding their offices at the king's will, and exposed to the displeasure of his council whenever they opposed any check to the prerogative, they held a vacillating course, which made them obnoxious to those who sought for despotic power, while it forfeited the esteem of the nation.

Means adopted to raise the revenue. Compositions for knighthood.

In pursuance of the system adopted by Charles's ministers, they had recourse to exactions, some odious and obsolete, some of very questionable legality, and others clearly against law. Of the former class may be reckoned the compositions for not taking the order of knighthood. The early kings of England, Henry III. and Edward I., very little in the spirit of chivalry, had introduced the practice of summoning their military tenants, holding

[k] State Trials, iii. 359. This was a very important determination, and put an end to such tyrannical persecution of Roman catholics for bare expressions of opinion as had been used under Elizabeth and James.

[m] Rushworth's Abr., ii. 253; Strafford's Letters, ii. 74.

[n] Whitelock, 18; Kennet, 63. We find in Rymer, xix. 279, a commission, dated May 6, 1631, enabling the privy council at all times to come, "to hear and examine all differences which shall arise betwixt any of our courts of justice, especially between the civil and eccles' astical jurisdictions," &c. This was in all probability contrived by Laud, or some of those who did not favour the common law. But I do not find that anything was done under this commission, which, I need hardly say, was as illegal as most of the king's other proceedings.

20*l.* per annum, to receive knighthood at their hands. Those who declined this honour were permitted to redeem their absence by a moderate fine.[o] Elizabeth, once in her reign, and James, had availed themselves of this ancient right. But the change in the value of money rendered it far more oppressive than formerly, though limited to the holders of 40*l.* per annum in military tenure. Commissioners were now appointed to compound with those who had neglected some years before to obey the proclamation, summoning them to receive knighthood at the king's coronation.[p] In particular instances very severe fines are recorded to have been imposed upon defaulters, probably from some political resentment.[q]

Still greater dissatisfaction attended the king's attempt to revive the ancient laws of the forests—those laws, of which, in elder times, so many complaints had been heard, exacting money by means of pretensions which long disuse had rendered dubious, and showing himself to those who lived on the borders of those domains in the hateful light of a litigious and encroaching neighbour. The earl of Holland held a court almost every year, as chief-justice in eyre, for the recovery of the king's forestal rights, which made great havoc with private property. No prescription could be pleaded against the king's title, which was to be found, indeed, by the inquest of a jury, but under the direction of a very partial tribunal. The royal forests in Essex were so enlarged that they were hyperbolically said to include the whole county.[r] The earl of Southampton

Forest laws.

[o] 2 Inst. 593. The regulations contained in the statute de militibus, 1 Ed. II., though apparently a temporary law, seem to have been considered by Coke as permanently binding. Yet in this statute the estate requiring knighthood, or a composition for it, is fixed at 20*l.* per annum.

[p] According to a speech of Mr. Hyde in the long parliament, not only military, tenants, but all others, and even lessees and merchants, were summoned before the council on this account. Parl. Hist. ii. 948. This was evidently illegal; especially if the Statutum de militibus was in force, which by express words exempts them. See Mr. Brodie's Hist. of British Empire, ii. 282. There is still some difficulty about this, which I cannot clear up, nor comprehend why the title, if it could be had for asking, was so continually declined; unless it were, as Mr. B. hints, that the fees of knighthood greatly exceeded the composition. Perhaps none who could not prove their gentility were admitted to the honour, though the fine was extorted from them. It is said that the king got 100,000*l.* by this resource. Macaulay, ii. 107.

[q] Rushworth's Abr. ii. 102.

[r] Strafford's Letters, i. 335.

was nearly ruined by a decision that stripped him of his estate near the New Forest.[s] The boundaries of Rockingham forest were increased from six miles to sixty, and enormous fines imposed on the trespassers; lord Salisbury being amerced in 20,000*l.*, lord Westmoreland in 19,000*l.*, Sir Christopher Hatton in 12,000*l.*[t] It is probable that a part of these was remitted.

A greater profit was derived from a still more pernicious and indefensible measure, the establishment of a chartered company with exclusive privileges of making soap. The recent statute against monopolies seemed to secure the public against this species of grievance. Noy, however, the attorney-general, a lawyer of uncommon eminence, and lately a strenuous assertor of popular rights in the house of commons, devised this project, by which he probably meant to evade the letter of the law, since every manufacturer was permitted to become a member of the company. They agreed to pay eight pounds for every ton of soap made, as well as 10,000*l.* for their charter. For this they were empowered to appoint searchers, and exercise a sort of inquisition over the trade. Those dealers who resisted their interference were severely fined on informations in the star-chamber. Some years afterwards, however, the king received money from a new corporation of soap-makers, and revoked the patent of the former.[u] Monopolies.

This precedent was followed in the erection of a similar company of starch-makers, and in a great variety of other grants, which may be traced in Rymer's Fœdera, and in the proceedings of the long parliament; till monopolies, in transgression or evasion of the late statute, became as common as they had been under James or Elizabeth. The king, by a proclamation at York, in 1639, beginning to feel the necessity of diminishing the public odium,

[s] Strafford's Letters, i. 463, 467.

[t] Id. ii. 117. It is well known that Charles made Richmond Park by means of depriving many proprietors not only of common rights, but of their freehold lands. Clarendon, i. 176. It is not clear that they were ever compensated; but I think this probable, as the matter excited no great clamour in the long parliament. And there is in Rymer, xx. 585, a commission to Cottington and others, directing them to compound with the owners of lands within the intended enclosures, Dec. 12, 1634.

[u] Kennet, 64; Rushworth's Abridg. ii. 132; Strafford's Letters, i. 446; Rymer xix. 324; Laud's Diary, 51.

revoked all these grants.* He annulled at the same time a number of commissions that had been issued in order to obtain money by compounding with offenders against penal statutes. The catalogue of these, as well as of the monopolies, is very curious. The former were, in truth, rather vexatious than illegal, and sustained by precedents in what were called the golden ages of Elizabeth and James, though at all times the source of great and just discontent.

Ship-money.

The name of Noy has acquired an unhappy celebrity by a far more famous invention, which promised to realise the most sanguine hopes that could have been formed of carrying on the government for an indefinite length of time without the assistance of parliament. Shaking off the dust of ages from parchments in the Tower, this man of venal diligence and prostituted learning discovered that the seaports and even maritime counties had in early times been sometimes called upon to furnish ships for the public service; nay, there were instances of a similar demand upon some inland places. Noy himself died almost immediately afterwards. Notwithstanding his apostasy from the public cause, it is just to remark that we have no right to impute to him the more extensive and more unprecedented scheme of ship-money, as a general tax, which was afterwards carried into execution. But it sprang by natural consequence from the former measure, according to the invariable course of encroachment, which those who have once bent the laws to their will ever continue to pursue. The first writ issued from the council in October, 1634. It was directed to the magistrates of London and other seaport towns. Reciting the depredations lately committed by pirates, and slightly adverting to the dangers imminent in a season of general war on the continent, it enjoins them to provide a certain number of ships of war of a prescribed tonnage and equipage; empowering them also to assess all the inhabitants for a contribution towards this armament according to their substance. The citizens of London humbly remonstrated that they conceived themselves exempt, by sundry charters and acts of parliament, from bearing such a charge. But the

* Rymer, xx. 340

council peremptorily compelled their submission, and the murmurs of inferior towns were still more easily suppressed. This is said to have cost the city of London 35,000*l.*[y]

There wanted not reasons in the cabinet of Charles for placing the navy at this time on a respectable footing. Algerine pirates had become bold enough to infest the Channel, and, what was of more serious importance, the Dutch were rapidly acquiring a maritime preponderance which excited a natural jealousy both for our commerce and the honour of our flag. This commercial rivalry conspired with a far more powerful motive at court, an abhorrence of everything republican or Calvinistic, to make our course of policy towards Holland not only unfriendly, but insidious and inimical in the highest degree. A secret treaty is extant, signed in 1631, by which Charles engaged to assist the king of Spain in the conquest of that great protestant commonwealth, retaining the isles of Zealand as the price of his co-operation.[z]

Yet, with preposterous inconsistency, as well as ill faith, the two characteristics of all this unhappy prince's foreign policy, we find him in the next year carrying on a negotiation with a disaffected party in the Netherlands, in some strange expectation of obtaining the sovereignty on their separation from Spain. Lord Cottington betrayed this intrigue (of which one whom we should little expect to find in these paths of conspiracy, Peter Paul Rubens, was the negotiator) to the court of Madrid.[a] It was, in fact, an unpardonable and unprovoked breach of faith on the king's part, and accounts for the indifference, to say no more, which that government always showed to his misfortunes. Charles, whose domestic position rendered a pacific system absolutely necessary, busied himself far more than common history has recorded with the affairs of Europe. He was engaged in a tedious and

[y] Kennet, 74, 75; Strafford's Letters, i. 353. Some petty seaports in Sussex refused to pay ship-money; but, finding that the sheriff had authority to distrain on them, submitted. The deputy-lieutenants of Devonshire wrote to the council in behalf of some towns a few miles distant from the sea, that they might be spared from this tax, saying it was a novelty. But they were summoned to London for this, and received a reprimand for their interference. Id. 372.

[z] Clarendon State Papers, i. 49, and ii. Append. p. xxvi.

[a] This curious intrigue, before unknown, I believe, to history, was brought to light by lord Hardwicke. State Papers, ii. 54.

unavailing negotiation with both branches of the house of Austria, especially with the court of Madrid, for the restitution of the Palatinate. He took a much greater interest than his father had done in the fortunes of his sister and her family; but, like his father, he fell into the delusion that the cabinet of Madrid, for whom he could effect but little, or that of Vienna, to whom he could offer nothing, would so far realize the cheap professions of friendship they were always making as to sacrifice a conquest wherein the preponderance of the house of Austria and the catholic religion in Germany were so deeply concerned. They drew him on accordingly through the labyrinths of diplomacy, assisted, no doubt, by that party in his council, composed at this time of lord Cottington, secretary Windebank, and some others, who had always favoured Spanish connexions.[b] It appears that the fleet raised in 1634 was intended, according to an agreement entered into with Spain, to restrain the Dutch from fishing in the English seas, nay, even as opportunities should arise, to co-operate hostilely with that of Spain.[c] After above two years spent in these negotiations, Charles discovered that the house of Austria were deceiving him; and, still keeping in view the restoration of his nephew to the electoral dignity and territories, entered into stricter relations with France: a policy which might be deemed congenial to the queen's inclinations, and recommended by her party in his council, the earl of Holland, sir Henry Vane, and perhaps by the earls of Northumberland and Arundel. In

[b] See Clarendon State Papers, i. 490, for a proof of the manner in which, through the Hispano-popish party in the cabinet, the house of Austria hoped to dupe and dishonour Charles.

[c] Clarendon State Papers, i. 109, et post. Five English ships out of twenty were to be at the charge of the king of Spain. Besides this agreement, according to which the English were only bound to protect the ships of Spain within their own seas, or the limits claimed as such, there were certain secret articles, signed Dec. 16, 1634; by one of which Charles bound himself, in case the Dutch should not make restitution of some Spanish vessels taken by them within the English seas, to satisfy the court of Spain himself out of ships and goods belonging to the Dutch; and by the second, to give secret instructions to the commanders of his ships, that, when those of Spain and Flanders should encounter their enemies at open sea, far from his coasts and limits, they should assist them if over-matched, and should give the like help to the prizes which they should meet, taken by the Dutch, that they might be freed and set at liberty; taking some convenient pretext to justify it, that the Hollanders might not hold it an act of hostility. But no part of this treaty was to take effect till the imperial ban upon the elector palatine should be removed. Id. 215.

the first impulse of indignation at the duplicity of Spain, the king yielded so far to their counsels as to meditate a declaration of war against that power.[d] But his own cooler judgment, or the strong dissuasions of Strafford, who saw that external peace was an indispensable condition for the security of despotism,[e] put an end to so imprudent a project; though he preserved, to the very meeting of the long parliament, an intimate connexion with France, and even continued to carry on negotiations, tedious and insincere, for an offensive alliance.[f] Yet he still made, from time to time, similar overtures to Spain;[g] and this unsteadiness, or rather duplicity, which could not easily be concealed from two cabinets eminent for their secret intelligence, rendered both of them his enemies, and the instruments, as there is much reason to believe, of some of his greatest calamities. It is well known that the Scots covenanters were in close connexion with Richelieu, and many circumstances render it probable that the Irish rebellion was countenanced and instigated both by him and by Spain.

This desire of being at least prepared for war, as well as the general system of stretching the prerogative beyond all limits, suggested an extension of the former writs from the seaports to the whole kingdom. Finch, chief justice of the common pleas, has the honour of this improvement on Noy's scheme. He was a man of little learning or respectability, a servile tool of the despotic cabal; who, as speaker of the last parliament, had, in obedience to a

Extension of writs for ship-money to inland places.

[d] Clarendon State Papers, i. 721, 761.

[e] Strafford Papers, ii. 52, 53, 60, 66. Richelieu sent d'Estrades to London, in 1637, according to Père Orleans, to secure the neutrality of England in case of his attacking the maritime towns of Flanders conjointly with the Dutch. But the ambassador was received haughtily, and the neutrality refused; which put an end to the scheme, and so irritated Richelieu, that he sent a priest named Chamberlain to Edinburgh the same year, in order to foment troubles in Scotland. Révol. d'Anglet. iii. 42. This is confirmed by d'Estrades himself. See note in Sidney Papers, ii. 447, and Harris's Life of Charles, 189; also Lingard, x. 69. The connexion of the Scotch leaders with Richelieu in 1639 is matter of notorious history. It has lately been confirmed and illustrated by an important note in Mazure. Hist. de la Révolution en 1688, ii. 402. It appears by the above-mentioned note of M. Mazure that the celebrated letter of the Scotch lords, addressed "Au Roy," was really sent, and is extant. There seems reason to think that Henrietta joined the Austrian faction about 1639; her mother being then in England and very hostile to Richelieu. This is in some degree corroborated by a passage in a letter of lady Carlisle. Sidney Papers, ii. 614.

[f] Sidney Papers, ii. 613.

[g] Clarendon State Papers, ii. 16.

command from the king to adjourn, refused to put the question upon a remonstrance moved in the house. By the new writs for ship-money, properly so denominated, since the former had only demanded the actual equipment of vessels, for which inland counties were of course obliged to compound, the sheriffs were directed to assess every landholder and other inhabitant, according to their judgment of his means, and to enforce the payment by distress.[h]

This extraordinary demand startled even those who had hitherto sided with the court. Some symptoms of opposition were shown in different places, and actions brought against those who had collected the money. But the greater part yielded to an overbearing power, exercised with such rigour that no one in this king's reign who had ventured on the humblest remonstrance against any illegal act had escaped without punishment. Indolent and improvident men satisfied themselves that the imposition was not very heavy, and might not be repeated. Some were content to hope that their contribution, however unduly exacted, would be faithfully applied to public ends. Others were overborne by the authority of pretended precedents, and could not yet believe that the sworn judges of the law would pervert it to its own destruction. The ministers prudently resolved to secure not the law, but its interpreters, on their side. The judges of assize were directed to inculcate on their circuits the necessary obligation of forwarding the king's service by complying with his writ. But, as the measure grew more obnoxious, and strong doubts of its legality came more to prevail, it was thought expedient to publish an extra-judicial opinion of the twelve judges, taken at the king's special command, according to the pernicious custom of that age. They gave it as their unanimous opinion that, "when the good and safety of the kingdom in general is concerned, and the whole kingdom in danger, his majesty might, by writ under the great seal, command all his subjects, at their charge, to provide and furnish such number of ships, with men, munition, and victuals, and for such time, as he should think fit, for the defence and safeguard

h See the instructions in Rushworth, ii. 214.

of the kingdom; and that by law he might compel the doing thereof, in case of refusal or refractoriness; and that he was the sole judge both of the danger, and when and how the same was to be prevented and avoided."

This premature declaration of the judges, which was publicly read by the lord-keeper Coventry in the star-chamber, did not prevent a few intrepid persons from bringing the question solemnly before them, that the liberties of their country might at least not perish silently, nor those who had betrayed them avoid the responsibility of a public avowal of their shame. The first that resisted was the gallant Richard Chambers, who brought an action against the lord-mayor for imprisoning him on account of his refusal to pay his assessment on the former writ. The magistrate pleaded the writ as a special justification; when Berkley, one of the judges of the king's bench, declared that there was a rule of law and a rule of government, that many things which could not be done by the first rule might be done by the other, and would not suffer counsel to argue against the lawfulness of ship-money.[i] The next were lord Say and Mr. Hampden, both of whom appealed to the justice of their country; but the famous decision which has made the latter so illustrious put an end to all attempts at obtaining redress by course of law.

Hampden's refusal to pay

Hampden, it seems hardly necessary to mention, was a gentleman of good estate in Buckinghamshire, whose assessment to the contribution for ship-money demanded from his county amounted only to twenty shillings.[k] The cause, though

[i] Rushworth, 253. The same judge declared afterwards, in a charge to the grand jury of York, that ship-money was an inseparable flower of the crown, glancing at Hutton and Croke for their opposition to it. Id. 267.

[k] As it is impossible to reconcile the trifling amount of this demand with Hampden's known estate, the tax being probably not much less than sixpence in the pound, it has been conjectured that his property was purposely rated low. But it is hard to perceive any motive for this indulgence; and it seems more likely that a nominal sum was fixed upon, in order to try the question; or that it was only assessed on a part of his estate.

[Lord Nugent has published a facsimile of the return made by the assessors of ship-money for the parish of Great Kimble, wherein Mr. Hampden is set down for 31s. 6d., and is returned with many others, as refusing to pay Memoirs of Hampden and his Times, vol. i. p. 230. But the suit in the exchequer was not on account of this demand, but for 20s., as stated in the text, due for property situate in the parish of Stoke Mandeville. This explains the smallness of the sum immediately in question; it was assessed only on a portion of Hampden's lands. 1845.]

properly belonging to the court of exchequer, was heard, on account of its magnitude, before all the judges in the exchequer-chamber.[m] The precise question, so far as related to Mr. Hampden, was, Whether the king had a right, on his own allegation of public danger, to require an inland county to furnish ships, or a prescribed sum of money by way of commutation, for the defence of the kingdom? It was argued by St. John and Holborne in behalf of Hampden; by the solicitor-general Littleton and the attorney-general Banks for the crown.[n]

Arguments on the case.

The law and constitution of England, the former maintained, had provided in various ways for the public safety and protection against enemies. First, there were the military tenures, which bound great part of the kingdom to a stipulated service at the charge of the possessors. The cinque ports also, and several other towns, some of them not maritime, held by a tenure analogous to this; and were bound to furnish a quota of ships or men as the condition of their possessions and privileges. These for the most part are recorded in Domesday-book, though now in general grown obsolete. Next to this specific service, our constitution had bestowed on the sovereign his certain revenues, the fruits of tenure, the profits of his various minor prerogatives; whatever, in short, he held in right of his crown was applicable, so far as it could be extended, to the public use. It bestowed on him, moreover, and perhaps with more special application to maritime purposes, the customs on importation of merchandise. These indeed had been recently augmented far beyond ancient usage. "For these modern impositions," says St. John, "of the legality thereof I intend not to speak; for in case his majesty may impose upon merchandise what himself pleaseth, there will be less cause to tax the inland counties; and in case he cannot do it, it will be strongly presumed that he can much less tax them."

But as the ordinary revenues might prove quite un-

[m] There seems to have been something unusual, if not irregular, in this part of the proceeding. The barons of the exchequer called in the other judges, not only by way of advice but direction, as the chief baron declares. State Trials, 1203. And a proof of this is, that the court of exchequer being equally divided, no judgment could have been given by the barons alone.

[n] State Trials, iii. 826-1252.

equal to great exigencies, the constitution has provided another means as ample and sufficient as it is lawful and regular—parliamentary supply. To this the kings of England have in all times had recourse; yet princes are not apt to ask as a concession what they might demand of right. The frequent loans and benevolences which they have required, though not always defensible by law, are additional proofs that they possessed no general right of taxation. To borrow on promise of repayment, to solicit, as it were, alms from their subjects, is not the practice of sovereigns whose prerogatives entitle them to exact money. Those loans had sometimes been repaid expressly to discharge the king's conscience. And a very arbitrary prince, Henry VIII., had obtained acts of parliament to release him from the obligation of repayment.

These merely probable reasonings prepare the way for that conclusive and irresistible argument that was founded on statute law. Passing slightly over the charter of the Conqueror, that his subjects shall hold their lands free from all unjust tallage, and the clause in John's Magna Charta, that no aid or scutage should be assessed but by consent of the great council (a provision not repeated in that of Henry III.), the advocates of Hampden relied on the 25 E. I., commonly called the Confirmatio Chartarum, which for ever abrogated all taxation without consent of parliament; and this statute itself they endeavoured to prove was grounded on requisitions very like the present, for the custody of the seal which Edward had issued the year before. Hence it was evident that the saving contained in that act for the accustomed aids and prizes could not possibly be intended, as the opposite counsel would suggest, to preserve such exactions as ship-money, but related to the established feudal aids, and to the ancient customs on merchandise. They dwelt less, however (probably through fear of having this exception turned against them), on this important statute than on one of more celebrity, but of very equivocal genuineness, denominated De Tallagio non Concedendo, which is nearly in the same words as the Confirmatio Chartarum, with the omission of the above-mentioned saving. More than one law enacted under Edward III. reasserts the necessity of parliamen-

tary consent to taxation. It was indeed the subject of frequent remonstrance in that reign, and the king often infringed this right. But the perseverance of the commons was successful, and ultimately rendered the practice conformable to the law. In the second year of Richard II., the realm being in imminent danger of invasion, the privy council convoked an assembly of peers and other great men, probably with a view to avoid the summoning of a parliament. This assembly lent their own money, but declared that they could not provide a remedy without charging the commons, which could not be done out of parliament, advising that one should be speedily summoned. This precedent was the more important as it tended to obviate that argument from peril and necessity on which the defenders of ship-money were wont to rely. But they met that specious plea more directly. They admitted that a paramount overruling necessity silences the voice of law; that in actual invasion, or its immediate prospect, the rights of private men must yield to the safety of the whole; that not only the sovereign, but each man in respect of his neighbour, might do many things absolutely illegal at other seasons; and this served to distinguish the present case from some strong acts of prerogative exerted by Elizabeth in 1588, when the liberties and religion of the people were in the most apparent jeopardy. But here there was no overwhelming danger; the nation was at peace with all the world: could the piracies of Turkish corsairs, or even the insolence of rival neighbours, be reckoned among those instant perils for which a parliament would provide too late?

To the precedents alleged on the other side it was replied, that no one of them met the case of an inland county; that such as were before the 25 E. I. were sufficiently repelled by that statute, such as occurred under Edward III. by the later statutes, and by the remonstrances of parliament during his reign; and there were but very few afterwards. But that, in a matter of statute law, they ought not to be governed by precedents, even if such could be adduced. Before the latter end of Edward I.'s reign, St. John observes, "All things concerning the king's prerogative and the subjects' liberties were upon uncertainties." "The government," says Holborne truly,

"was more of force than law." And this is unquestionably applicable, in a less degree, to many later ages.

Lastly, the Petition of Right, that noble legacy of a slandered parliament, reciting and confirming the ancient statutes, had established that no man thereafter be compelled to make or yield any gift, loan, benevolence, tax, or such-like charge, without common consent by act of parliament. This latest and most complete recognition must sweep away all contrary precedent, and could not, without a glaring violation of its obvious meaning, be stretched into an admission of ship-money.

The king's counsel, in answer to these arguments, appealed to that series of records which the diligence of Noy had collected. By far the greater part of these were commissions of array. But several, even of those addressed to inland towns (and, if there were no service by tenure in the case, it does not seem easy to distinguish these in principle from counties), bore a very strong analogy to the present. They were, however, in early times. No sufficient answer could be offered to the statutes that had prohibited unparliamentary taxation. The attempts made to elude their force were utterly ineffectual, as those who are acquainted with their emphatic language may well conceive. But the council of Charles I., and the hirelings who ate their bread, disdained to rest their claim of ship-money (big as it was with other and still more novel schemes) on obscure records, or on cavils about the meaning of statutes. They resorted rather to the favourite topic of the times, the intrinsic, absolute authority of the king. This the attorney-general Banks placed in the very front of his argument. "This power," says he, "is innate in the person of an absolute king, and in the persons of the kings of England. All magistracy it is of nature, and obedience and subjection it is of nature. This power is not any ways derived from the people, but reserved unto the king when positive laws first began. For the king of England he is an absolute monarch; nothing can be given to an absolute prince but what is inherent in his person. He can do no wrong. He is the sole judge, and we ought not to question him. Where the law trusts we ought not to distrust. The acts of parliament," he observed, "contained no express words to take away so high a preroga-

tive; and the king's prerogative, even in lesser matters, is always saved wherever express words do not restrain it."

But this last argument appearing too modest for some of the judges who pronounced sentence in this cause, they denied the power of parliament to limit the high prerogatives of the crown. "This imposition without parliament," says Justice Crawley, "appertains to the king originally, and to the successor ipso facto, if he be a sovereign in right of his sovereignty from the crown. You cannot have a king without these royal rights, no, not by act of parliament." "Where Mr. Holborne," says Justice Berkley, "supposed a fundamental policy in the creation of the frame of this kingdom, that, in case the monarch of England should be inclined to exact from his subjects at his pleasure, he should be restrained, for that he could have nothing from them but upon a common consent in parliament, he is utterly mistaken herein. The law knows no such king-yoking policy. The law is itself an old and trusty servant of the king's: it is his instrument or means which he useth to govern his people by: I never read nor heard that lex was rex; but it is common and most true that rex is lex." Vernon, another judge, gave his opinion in few words: "That the king, pro bono publico, may charge his subjects for the safety and defence of the kingdom notwithstanding any act of parliament, and that a statute derogatory from the prerogative doth not bind the king; and the king may dispense with any law in cases of necessity." Finch, the adviser of the ship-money, was not backward to employ the same argument in its behalf. "No act of parliament," he told them, "could bar a king of his regality, as that no land should hold of him, or bar him of the allegiance of his subjects or the relative on his part, as trust and power to defend his people; therefore acts of parliament to take away his royal power in the defence of his kingdom are void; they are void acts of parliament to bind the king not to command the subjects, their persons, and goods, and I say their money too; for no acts of parliament make any difference."

Seven of the twelve judges, namely, Finch, chief justice of the common pleas, Jones, Berkley, Vernon, Crawley, Trevor, and Weston, gave judgment for the

crown. Brampston, chief justice of the king's bench, and Davenport, chief baron of the exchequer, pronounced for Hampden, but on technical reasons, and adhering to the majority on the principal question. Denham, another judge of the same court, being extremely ill, gave a short written judgment in favour of Hampden. But justices Croke and Hutton, men of considerable reputation and experience, displayed a most praiseworthy intrepidity in denying, without the smallest qualification, the alleged prerogative of the crown and the lawfulness of the writ for ship-money. They had unfortunately signed, along with the other judges, the above-mentioned opinion in favour of the right. For this they made the best apology they could, that their voice was concluded by the majority. But in truth it was the ultimate success that sometimes attends a struggle between conscience and self-interest or timidity.[o]

The length to which this important cause was protracted, six months having elapsed from the opening speech of Mr. Hampden's council to the final judgment, was of infinite disservice to the crown. During this long period every man's attention was directed to the exchequer-chamber. The convincing arguments of St. John and Holborne, but still more the division on the bench, increased their natural repugnance to so unusual and dangerous a prerogative.[p] Those who had trusted to the faith of the judges were undeceived by the honest repentance of some, and looked with indignation on so prostituted a crew. That respect for courts of justice which the happy structure of our judicial administration has in general kept inviolate was exchanged for distrust,

[o] Croke, whose conduct on the bench in other political questions was not without blemish, had resolved to give judgment for the king, but was withheld by his wife, who implored him not to sacrifice his conscience for fear of any danger or prejudice to his family, being content to suffer any misery with him, rather than to be an occasion for him to violate his integrity. Whitelock, p. 25. Of such high-minded and inflexible women our British history produces many examples.

[p] Laud writes to lord Wentworth, that Croke and Hutton had both gone against the king very sourly. "The accidents which have followed upon it already are these: First, the faction are grown very bold. Secondly, the king's moneys come in a great deal more slowly than they did in former years, and that to a very considerable sum. Thirdly, it puts thoughts into wise and moderate men's heads which were better out; for they think, if the judges, which are behind, do not their parts both exceeding well and thoroughly, it may much distemper this extraordinary and great service." Straf. ford Letters, ii. 170

contempt, and desire of vengeance. They heard the speeches of some of the judges with more displeasure than even their final decision. Ship-money was held lawful by Finch and several other judges, not on the authority of precedents, which must in their nature have some bounds, but on principles subversive of any property or privilege in the subject. Those paramount rights of monarchy, to which they appealed to-day in justification of ship-money, might to-morrow serve to supersede other laws, and maintain new exertions of despotic power. It was manifest by the whole strain of the court lawyers that no limitations on the king's authority could exist but by the king's sufferance. This alarming tenet, long bruited among the churchmen and courtiers, now resounded in the halls of justice. But ship-money, in consequence, was paid with far less regularity and more reluctance than before.[q] The discontent that had been tolerably smothered was now displayed in every county; and though the council did not flinch in the least from exacting payment, nor willingly remit any part of its rigour towards the uncomplying, it was impossible either to punish the great body of the country gentlemen and citizens, or to restrain their murmurs by a few examples. Whether in consequence of this unwillingness, or for other reasons, the revenue levied in different years under the head of ship-money is more fluctuating than we should expect from a fixed assessment; but may be reckoned at an average sum of 200,000*l.*[r]

Proclamations.

It would doubtless be unfair to pass a severe censure on the government of Charles I. for transgressions of law which a long course of precedents might render dubious, or at least extenuate. But this common apology for his administration, on which the artful defence of Hume is almost entirely grounded, must be admitted cautiously, and not until we have well considered how far such precedents could be brought to support it. This is particularly applicable

[q] It is *notoriously* known that pressure was borne with much more cheerfulness before the judgment for the king than ever it was after. Clarendon, p. 122.

[r] Rushworth Abr. ii. 341; Clarendon State Papers, i. 600. It is said by Heylin that the clergy were much spared in the assessment of ship-money: Life of Laud, 302.

to his proclamations. I have already pointed out the comparative novelty of these unconstitutional ordinances, and their great increase under James. They had not been fully acquiesced in; the commons had remonstrated against their abuse; and Coke, with other judges, had endeavoured to fix limits to their authority, very far within that which they arrogated. It can hardly, therefore, be said that Charles's council were ignorant of their illegality; nor is the case at all parallel to that of general warrants, or any similar irregularity into which an honest government may inadvertently be led. They serve at least to display the practical state of the constitution, and the necessity of an entire reform in its spirit.

Various arbitrary proceedings.

The proclamations of Charles's reign are far more numerous than those of his father. They imply a prerogative of intermeddling with all matters of trade, prohibiting or putting under restraint the importation of various articles, and the home growth of others, or establishing regulations for manufactures.[s] Prices of several minor articles were fixed by proclamation; and in one instance this was extended to poultry, butter, and coals.[t] The king declares by a proclamation that he had incorporated all tradesmen and artificers within London and three miles round; so that no person might set up any trade without having served a seven years' apprenticeship, and without admission into such corporation.[u] He prohibits, in like manner, any one from using the trade of a maltster or that of a brewer without admission into the corporations of maltsters or brewers erected for every county.[x] I know not whether these projects were in any degree founded on the alleged pretext of correcting abuses, or were solely designed to raise money by means of these corporations. We find, however, a revocation of the restraint on malting and brewing soon after. The illegality of these proclamations is most unquestionable.

The rapid increase of London continued to disquiet the

[s] Rymer, passim.

[t] Id. xix. 512. It may be curious to mention some of these. The best turkey was to be sold at 4s. 6d.; the best goose at 2s. 4d.; the best pullet 1s. 8d.; three eggs for a penny; fresh butter at 5d. in summer and 6d. in winter. This was in 1634.

[u] Rymer, xx. 113.

[x] Id. 157

court. It was the stronghold of political and religious disaffection. Hence the prohibitions of erecting new houses, which had begun under Elizabeth, were continually repeated.[y] They had indeed some laudable objects in view; to render the city more healthy, cleanly, and magnificent, and by prescribing the general use of brick instead of wood, as well as by improving the width and regularity of the streets, to afford the best security against fires, and against those epidemical diseases which visited the metropolis with unusual severity in the earlier years of this reign. The most jealous censor of royal encroachments will hardly object to the proclamations enforcing certain regulations of police in some of those alarming seasons.

It is probable, from the increase which we know to have taken place in London during this reign, that licences for building were easily obtained. The same supposition is applicable to another class of proclamation, enjoining all persons who had residences in the country to quit the capital and repair to them.[z] Yet, that these were not always a dead letter appears from an information exhibited in the star-chamber against seven lords, sixty knights, and one hundred esquires, besides many ladies, for disobeying the king's proclamation, either by continuing in London or returning to it after a short absence.[a] The result of this prosecution, which was probably only intended to keep them in check, does not appear. No proclamation could stand in need of support from law while this arbitrary tribunal assumed a right of punishing misdemeanors. It would have been a dangerous aggravation of any delinquent's offence to have questioned the authority of a proclamation, or the jurisdiction of the council.

The security of freehold rights had been the peculiar boast of the English law. The very statute of Henry VIII., which has been held up to so much infamy, while it gave the force of law to his proclamations,

[y] Id. xviii. 33, et alibi. A commission was granted to the earl of Arundel and others, May 30, 1625, to inquire what houses, shops, &c., had been built for ten years past, especially since the last proclamation, and to commit the offenders. It recites the care of Elizabeth and James to have the city built in an uniform manner with brick, and also to clear it from under-tenants and base people who live by begging and stealing. Id. xviii. 97.

[z] Id. xix. 375.

[a] Rushworth Abr. ii. 232.

interposed its barrier in defence of the subject's property. The name of freeholder, handed down with religious honour from an age when it conveyed distinct privileges, and as it were a sort of popular nobility, protected the poorest man against the crown's and the lord's rapacity. He at least was recognised as the liber homo of Magna Charta, who could not be disseised of his tenements and franchises. His house was his castle, which the law respected, and which the king dared not enter. Even the public good must give way to his obstinacy; nor had the legislature itself as yet compelled any man to part with his lands for a compensation which he was loth to accept. The council and star-chamber had very rarely presumed to meddle with his right; never perhaps where it was acknowledged and ancient. But now this reverence of the common law for the sacredness of real property was derided by those who revered nothing as sacred but the interests of the church and crown. The privy council, on a suggestion that the demolition of some houses and shops in the vicinity of St. Paul's would show the cathedral to more advantage, directed that the owners should receive such satisfaction as should seem reasonable; or, on their refusal, the sheriff was required to see the buildings pulled down, "it not being thought fit the obstinacy of those persons should hinder so considerable a work."[b] By another order of council, scarcely less oppressive and illegal, all shops in Cheapside and Lombard-street, except those of goldsmiths, were directed to be shut up, that the avenue to St. Paul's might appear more splendid; and the mayor and aldermen were repeatedly threatened for remissness in executing this mandate of tyranny.[c]

In the great plantation of Ulster by James, the city of London had received a grant of extensive lands in the county of Derry, on certain conditions prescribed in their charter. The settlement became flourishing, and enriched the city. But the wealth of London was always invidious to the crown, as well as to the needy courtiers. On an information filed in the star-chamber for certain alleged breaches of their charter, it was not only adjudged to be forfeited to the king, but a fine of 70,000*l.* was imposed on

[b] Rushworth Abr. ii. 79. [c] Id. p. 313.

the city. They paid this enormous mulct; but were kept out of their lands till restored by the long parliament.[d] In this proceeding Charles forgot his duty enough to take a very active share, personally exciting the court to give sentence for himself.[e] Is it then to be a matter of surprise or reproach that the citizens of London refused him assistance in the Scottish war, and through the ensuing times of confusion harboured an implacable resentment against a sovereign who had so deeply injured them?

We may advert in this place to some other stretches of power, which no one can pretend to justify, though in general they seem to have escaped notice amidst the enormous mass of national grievances. A commission was issued in 1635 to the recorder of London and others, to examine all persons going beyond seas, and tender to them an oath of the most inquisitorial nature.[f] Certain privy councillors were empowered to enter the house of sir Robert Cotton, and search his books, records, and papers, setting down such as ought to belong to the crown.[g] This renders probable what we find in a writer who had the best means of information, that secretary Windebank, by virtue of an order of council, entered sir Edward Coke's house while he lay on his death-bed, and took away his manuscripts, together with his last will, which was never returned to his family.[h] The high-commission court were enabled by the king's "supreme power ecclesiastical" to examine such as were charged with offences cognizable by them on oath, which many had declined to take, according to the known maxims of English law.[i]

It would be improper to notice as illegal or irregular the practice of granting dispensations in particular in-

[d] Rushworth Abr. iii. 123; Whitelock, p. 35; Strafford Letters, i. 374, et alibi. See what Clarendon says, p. 293 (ii. 151, edit. 1826). The second of these tells us that the city offered to build for the king a palace in St. James's park by way of composition, which was refused. If this be true it must allude to the palace already projected by him, the magnificent designs for which by Inigo Jones are well known. Had they been executed the metropolis would have possessed a splendid monument of Palladian architecture; and the reproach sometimes thrown on England, of wanting a fit mansion for its monarchs, would have been prevented. But the exchequer of Charles I. had never been in such a state as to render it at all probable that he could undertake so costly a work.

[e] Strafford Letters, i. 340.

[f] Rymer, xix. 699.

[g] Id. 199.

[h] Roger Coke's Detection of the Court of England, i. 309. He was sir Edward's grandson.

[i] Rymer, xx. 190.

stances, either from general acts of parliament or the local statutes of colleges. Such a prerogative, at least in the former case, was founded on long usage and judicial recognition. Charles, however, transgressed its admitted boundaries when he empowered others to dispense with them as there might be occasion. Thus, in a commission to the president and council of the North, directing them to compound with recusants, he in effect suspends the statute which provides that no recusant shall have a lease of that portion of his lands which the law sequestered to the king's use during his recusancy; a clause in this patent enabling the commissioners to grant such leases notwithstanding any law or statute to the contrary. This seems to go beyond the admitted limits of the dispensing prerogative.[k]

The levies of tonnage and poundage without authority of parliament, the exaction of monopolies, the extension of the forests, the arbitrary restraints of proclamations, above all the general exaction of ship-money, form the principal articles of charge against the government of Charles, so far as relates to its inroads on the subject's property. These were maintained by a vigilant and unsparing exercise of jurisdiction in the court of star-chamber. I have, in another chapter, traced the revival of this great tribunal, probably under Henry VIII., in at least as formidable a shape as before the now-neglected statutes of Edward III. and Richard II., which had placed barriers in its way. It was the great weapon of executive power under Elizabeth and James; nor can we reproach the present reign with innovation in this respect, though in no former period had the proceedings of this court been accompanied with so much violence and tyranny. But this will require some fuller explication.

I hardly need remind the reader that the jurisdiction of the ancient Concilium regis ordinarium, or court of star-chamber, continued to be exercised more or less frequently, notwithstanding the various statutes enacted to repress it; and that it neither was supported by the act erecting a new court in the third of Henry VII., nor originated at that time. The

Star-chamber jurisdiction.

[k] Id. xix. 340. See also 82.

records show the star-chamber to have taken cognizance both of civil suits and of offences throughout the time of the Tudors. But precedents of usurped power cannot establish a legal authority in defiance of the acknowledged law. It appears that the lawyers did not admit any jurisdiction in the council, except so far as the statute of Henry VII. was supposed to have given it. "The famous Plowden put his hand to a demurrer to a bill," says Hudson, "because the matter was not within the statute; and, although it was then overruled, yet Mr. Serjeant Richardson, thirty years after, fell again upon the same rock, and was sharply rebuked for it." [m] The chancellor, who was the standing president of the court of star-chamber, would always find pretences to elude the existing statutes, and justify the usurpation of this tribunal.

The civil jurisdiction claimed and exerted by the star-chamber was only in particular cases, as disputes between alien merchants and Englishmen, questions of prize or unlawful detention of ships, and in general such as now belong to the court of admiralty; some testamentary

[m] Hudson's Treatise of the Court of Star-Chamber, p. 51. This valuable work, written about the end of James's reign, is published in Collectanea Juridica, vol. ii. There is more than one manuscript of it in the British Museum.

In another treatise, written by a clerk of the council about 1590 (Hargrave MSS. ccxvi. 195), the author says,—"There was a time when there grew a controversy between the star-chamber and the king's bench, for their jurisdiction in a cause of perjury concerning tithes, sir Nicholas Bacon, that most grave and worthy counsellor, then being lord-keeper of the great seal, and sir Robert Catlyn, knight, then lord chief justice of the bench. To the deciding thereof were called by the plaintiff and defendant a great number of the learned counsellors of the law: they were called into the inner star-chamber after dinner, where before the lords of the council they argued the cause on both sides, but could not find the court of greater antiquity by all their books than Henry VII. and Richard III. On this I fell in cogitation how to find some further knowledge thereof." He proceeds to inform us that by search into records he traced its jurisdiction much higher. This shows, however, the doubts entertained of its jurisdiction in the queen's time. This writer, extolling the court highly, admits that "some of late have deemed it to be new, and put the same in print, to the blemish of its beautiful antiquity." He then discusses the question (for such it seems it was), whether any peer, though not of the council, might sit in the star-chamber; and decides in the negative. "A°. 5to. of her majesty," he says, in the case of the earl of Hertford, "there were assembled a great number of the noble barons of this realm, not being of the council, who offered there to sit; but at that time it was declared unto them by the lord-keeper that they were to give place, and so they did, and divers of them tarried the hearing of the cause at the bar."

This note ought to have been inserted in Chapter I., where the antiquity of the star-chamber is mentioned, but was accidentally overlooked.

matters, in order to prevent appeals to Rome, which might have been brought from the ecclesiastical courts; suits between corporations, "of which," says Hudson, "I dare undertake to show above a hundred in the reigns of Henry VII. and Henry VIII., or sometimes between men of great power and interest, which could not be tried with fairness by the common law."[n] For the corruption of sheriffs and juries furnished an apology for the irregular, but necessary, interference of a controlling authority. The ancient remedy, by means of attaint, which renders a jury responsible for an unjust verdict, was almost gone into disuse, and, inasmuch as it depended on the integrity of a second jury, not always sure to be obtained; so that in many parts of the kingdom, and especially in Wales, it was impossible to find a jury who would return a verdict against a man of good family, either in a civil or criminal proceeding.

The statutes, however, restraining the council's jurisdiction, and the strong prepossession of the people as to the sacredness of freehold rights, made the star-chamber cautious of determining questions of inheritance, which they commonly remitted to the judges; and from the early part of Elizabeth's reign they took a direct cognizance of any civil suits less frequently than before; partly, I suppose, from the increased business of the court of chancery and the admiralty court, which took away much wherein they had been wont to meddle; partly from their own occupation as a court of criminal judicature, which became more conspicuous as the other went into disuse.[o] This criminal jurisdiction is that which rendered the star-chamber so potent and so odious an auxiliary of a despotic administration.

The offences principally cognizable in this court were forgery, perjury, riot, maintenance, fraud, libel, and conspiracy.[p] But, besides these, every misdemeanor came within the proper scope of its inquiry; those especially of public importance, and for which the law, as

[n] Hudson's Treatise of the Court of Star-Chamber, p. 56.

[o] P. 62. Lord Bacon observes that the council in his time did not meddle with *meum* and *tuum* as formerly; and that such causes ought not to be entertained. Vol. i. 720; vol. ii. 208. "The king," he says, "should be sometimes present, yet not too often." James was too often present, and took one well-known criminal proceeding, that against sir Thomas Lake and his family, entirely into his own hands.

[p] P. 82.

then understood, had provided no sufficient punishment. For the judges interpreted the law in early times with too great narrowness and timidity; defects which, on the one hand, raised up the overruling authority of the court of chancery, as the necessary means of redress to the civil suitor who found the gates of justice barred against him by technical pedantry; and, on the other, brought this usurpation and tyranny of the star-chamber upon the kingdom by an absurd scrupulosity about punishing manifest offences against the public good. Thus corruption, breach of trust, and malfeasance in public affairs, or attempts to commit felony, seem to have been reckoned not indictable at common law, and came in consequence under the cognizance of the star-chamber.[q] In other cases its jurisdiction was merely concurrent; but the greater certainty of conviction, and the greater severity of punishment, rendered it incomparably more formidable than the ordinary benches of justice. The law of libel grew up in this unwholesome atmosphere, and was moulded by the plastic hands of successive judges and attorneys-general. Prosecutions of this kind, according to Hudson, began to be more frequent from the last years of Elizabeth, when Coke was attorney-general; and it is easy to conjecture what kind of interpretation they received. To hear a libel sung or read, says that writer, and to laugh at it, and make merriment with it, has ever been held a publication in law. The gross error that it is not a libel if it be true, has long since, he adds, been exploded out of this court.[r]

Among the exertions of authority practised in the star-chamber which no positive law could be brought to warrant, he enumerates "punishments of breach of proclamations before they have the strength of an act of parliament; which this court hath stretched as far as ever any act of parliament did. As in the 41st of Elizabeth builders of houses in London were sentenced, and their houses ordered to be pulled down, and the materials to be distributed to the benefit of the parish where the building was; which disposition of the goods soundeth as a great extremity, and beyond the warrant of our laws; and yet surely very necessary, if anything would

[q] Hudson's Treatise of the Court of Star-Chamber, p. 108.
[r] P. 100, 102.

deter men from that horrible mischief of increasing that head which is swoln to a great hugeness already."*

The mode of process was sometimes of a summary nature; the accused person being privately examined, and his examination read in the court, if he was thought to have confessed sufficient to deserve sentence, it was immediately awarded without any formal trial or written process. But the more regular course was by information filed at the suit of the attorney-general, or, in certain cases, of a private relator. The party was brought before the court by writ of subpœna; and having given bond with sureties not to depart without leave, was to put in his answer upon oath, as well to the matters contained in the information, as to special interrogatories. Witnesses were examined upon interrogatories, and their depositions read in court. The course of proceeding on the whole seems to have nearly resembled that of the chancery.†

Punishment inflicted by the star-chamber.

It was held competent for the court to adjudge any punishment short of death. Fine and imprisonment were of course the most usual. The pillory, whipping, branding, and cutting off the ears, grew into use by degrees. In the reign of Henry VII. and Henry VIII., we are told by Hudson, the fines were not so ruinous as they have been since, which he ascribes to the number of bishops who sat in the court, and inclined to mercy; "and I can well

* P. 107. The following case in the queen's reign goes a great way:—An information was preferred in the star-chamber against Griffin and another for erecting a tenement in Hog-lane, which he divided into several rooms, wherein were inhabiting two poor tenants, that only lived and were maintained by the relief of their neighbours, &c. The attorney-general, and also the lord mayor and aldermen, prayed some condign punishment on Griffin and the other, and that the court would be pleased to set down and decree some general order in this and other like cases of new building and division of tenements. Whereupon the court, generally considering the great growing evils and inconveniences that continually breed and happen by this new-erected building and divisions made and divided contrary to her majesty's said proclamation, commit the offenders to the Fleet, and fine them 20*l.* each; but considering that if the houses be pulled down other habitations must be found, did not, as requested, order this to be done for the present, but that the tenants should continue for their lives without payment of rent, and the landlord is directed not to molest them, and after the death or departure of the tenants the houses to be pulled down. Harl. MSS. N. 299, fol. 7.

† Harl. MSS. p. 142, &c. It appears that the court of star-chamber could not sentence to punishment on the deposition of an eye-witness (Rushw. Abr. ii. 114): a rule which did not prevent their receiving the most imperfect and inconclusive testimony.

remember," he says, "that the most reverend archbishop Whitgift did ever constantly maintain the liberty of the free charter, that men ought to be fined, salvo contenemento. But they have been of late imposed according to the nature of the offence, and not the estate of the person. The slavish punishment of whipping," he proceeds to observe, "was not introduced till a great man of the common law, and otherwise a worthy justice, forgot his place of session, and brought it in this place too much in use."[u] It would be difficult to find precedents for the aggravated cruelties inflicted on Leighton, Lilburne, and others; but instances of cutting off the ears may be found under Elizabeth.[v]

The reproach, therefore, of arbitrary and illegal jurisdiction does not wholly fall on the government of Charles. They found themselves in possession of this almost unlimited authority. But doubtless, as far as the history of proceedings in the star-chamber are recorded, they seem much more numerous and violent in the present reign than in the two preceding. Rushworth has preserved a copious selection of cases determined before this tribunal. They consist principally of misdemeanors, rather of an aggravated nature; such as disturbances of the public peace, assaults accompanied with a good deal of violence, conspiracies, and libels. The necessity, however, for such a paramount court to restrain the excesses of powerful men no longer existed, since it can hardly be doubted that the common administration of the law was sufficient to give redress in the time of Charles I.; though we certainly do find several instances of violence and outrage by men of a superior station in life, which speak unfavourably for the state of manners in the kingdom. But the object of drawing so large a

[u] Hudson, p. 36, 224. Instead of "the slavish punishment of whipping," the printed book has "the slavish speech of whispering," which of course entirely alters the sense, or rather makes nonsense. I have followed a MS. in the Museum (Hargrave, vol. 250), which agrees with the abstract of this treatise by Rushworth, ii. 348.

[v] Vallenger, author of seditious libels, was sentenced in the queen's reign to stand twice in the pillory and lose both his ears. Harl. MSS. 6265, fol. 373. So also the conspirators who accused archbishop Sandys of adultery. Id. 376. And Mr. Pound, a Roman catholic gentleman, who had suffered much before for his religion, was sentenced by that court, in 1603, to lose both his ears, to be fined 1000*l.*, and imprisoned for life, unless he declare who instigated him to charge serjeant Phillips with injustice in condemning a neighbour of his to death Winwood, ii. 36.

number of criminal cases into the star-chamber seems to have been twofold: first, to inure men's minds to an authority more immediately connected with the crown than the ordinary courts of law, and less tied down to any rules of pleading or evidence; secondly, to eke out a scanty revenue by penalties and forfeitures. Absolutely regardless of the provision of the Great Charter, that no man shall be amerced even to the full extent of his means, the councillors of the star-chamber inflicted such fines as no court of justice, even in the present reduced value of money, would think of imposing. Little objection indeed seems to lie, in a free country, and with a well-regulated administration of justice, against the imposition of weighty pecuniary penalties, due consideration being had of the offence and the criminal. But, adjudged by such a tribunal as the star-chamber, where those who inflicted the punishment reaped the gain, and sat, like famished birds of prey, with keen eyes and bended talons, eager to supply for a moment, by some wretch's ruin, the craving emptiness of the exchequer, this scheme of enormous penalties became more dangerous and subversive of justice, though not more odious, than corporal punishment. A gentleman of the name of Allington was fined 12,000*l.* for marrying his niece. One who had sent a challenge to the earl of Northumberland was fined 5000*l.*; another for saying the earl of Suffolk was a base lord, 4000*l.* to him, and a like sum to the king. Sir David Forbes, for opprobrious words against lord Wentworth, incurred 5000*l.* to the king, and 3000*l.* to the party. On some soapboilers, who had not complied with the requisitions of the newly-incorporated company, mulcts were imposed of 1500*l.* and 1000*l.* One man was fined and set in the pillory for engrossing corn, though he only kept what grew on his own land, asking more in a season of dearth than the overseers of the poor thought proper to give.* Some arbitrary regulations with respect to prices may be excused by a well-intentioned though mistaken policy. The charges of inns and taverns were fixed by the judges. But even in those a corrupt motive was sometimes blended. The company of vintners, or victuallers,

* The scarcity must have been very great this season (1631), for he refused 2*l.* 18*s.* for the quarter of rye. Rushworth, ii. 110.

having refused to pay a demand of the lord treasurer, one penny a quart for all wine drank in their houses, the star-chamber, without information filed or defence made, interdicted them from selling or dressing victuals till they submitted to pay forty shillings for each tun of wine to the king.[y] It is evident that the strong interest of the court in these fines must not only have had a tendency to aggravate the punishment, but to induce sentences of condemnation on inadequate proof. From all that remains of proceedings in the star-chamber, they seem to have been very frequently as iniquitous as they were severe. In many celebrated instances the accused party suffered less on the score of any imputed offence than for having provoked the malice of a powerful adversary, or for notorious dissatisfaction with the existing government. Thus Williams, bishop of Lincoln, once lord keeper, the favourite of king James, the possessor for a season of the power that was turned against him, experienced the rancorous and ungrateful malignity of Laud; who, having been brought forward by Williams into the favour of the court, not only supplanted by his intrigues, and incensed the king's mind against his benefactor, but harassed his retirement by repeated persecutions.[z] It will sufficiently illustrate the spirit of these times to mention that the sole offence imputed to the bishop of Lincoln in the last information against him in the star-chamber was, that he had received certain letters from one Osbaldiston, master of Westminster school, wherein some contemptuous nickname was used to denote Laud.[a] It did not appear that Williams had ever divulged these letters. But it was held that the concealment of a libellous letter was a high misdemeanor. Williams was therefore adjudged to pay 5000*l.* to the king, and 3000*l.* to the archbishop, to be imprisoned during pleasure, and to make a submission; Osbaldiston to pay a still heavier fine, to be deprived of

Case of bishop Williams.

[y] Rushworth, ii. 340. Garrard, the correspondent of Wentworth, who sent him all London news, writes about this, "The attorney-general hath sent to all taverns to prohibit them to dress meat; somewhat was required of them, a halfpenny a quart for French wine, and a penny for sack and other richer wines, for the king: the gentlemen vintners grew sullen, and would not give it, so they are all well enough served." Strafford Letters, i. 507.

[z] Hacket's Life of Williams. Rushworth, Abr. ii. 315, et post. Brodie, ii. 363.

[a] Osbaldiston swore that he did not mean Laud; an undoubted perjury.

all his benefices, to be imprisoned and make submission, and moreover to stand in the pillory before his school in Dean's-yard, with his ears nailed to it. This man had the good fortune to conceal himself; but the bishop of Lincoln, refusing to make the required apology, lay about three years in the Tower, till released at the beginning of the long parliament.[a]

It might detain me too long to dwell particularly on the punishments inflicted by the court of star-chamber in this reign. Such historians as have not written in order to palliate the tyranny of Charles, and especially Rushworth, will furnish abundant details, with all those circumstances that portray the barbarous and tyrannical spirit of those who composed that tribunal. Two or three instances are so celebrated that I cannot pass them over. Leighton, a Scots divine, having published an angry libel against the hierarchy, was sentenced to be publicly whipped at Westminster and set in the pillory, to have one side of his nose slit, one ear cut off, and one side of his cheek branded with a hot iron, to have the whole of this repeated the next week at Cheapside, and to suffer perpetual imprisonment in the Fleet.[b] Lilburne, for dispersing pamphlets against the bishops, was whipped from the Fleet prison to Westminster, there set in the pillory, and treated afterwards with great cruelty.[c] Prynne, a lawyer of uncommon erudition, and a zealous puritan, had printed a bulky volume, called Histriomastix, full of invectives against the theatre, which he sustained by a profusion of learning. In the course of this he adverted to the appearance of courtesans on the Roman stage, and by a satirical reference in his index seemed to range all female actors in the class.[d]

Case of Prynne.

[b] Mr. Brodie (Hist. of Brit. Emp., vol. ii. p. 309) observes that he cannot find in Leighton's book (which I have never seen) the passage constantly brought forward by Laud's apologists, wherein he is supposed to have recommended the assassination of the bishops. He admits, indeed, as does Harris, that the book was violent; but what can be said of the punishment?

[c] Rushworth. State Trials.

[d] Id. Whitelock, p. 18. Harris's Life of Charles, p. 262 The unfortunate words in the index, "Women actors notorious whores," cost Prynne half his ears; the remainder he saved by the hangman's mercy for a second harvest. When he was brought again before the star-chamber, some of the lords turned up his hair, and expressed great indignation that his ears had not been better cropped. State Trials, 717. The most brutal and servile of these courtiers seems to have been the earl of Dorset, though Clarendon speaks well of him. He was also impudently corrupt, declaring that

The queen, unfortunately, six weeks after the publication of Prynne's book, had performed a part in a mask at court. This passage was accordingly dragged to light by the malice of Peter Heylin, a chaplain of Laud, on whom the archbishop devolved the burthen of reading this heavy volume in order to detect its offences. Heylin, a bigoted enemy of everything puritanical, and not scrupulous as to veracity, may be suspected of having aggravated, if not misrepresented, the tendency of a book much more tiresome than seditious. Prynne, however, was already obnoxious, and the star-chamber adjudged him to stand twice in the pillory, to be branded in the forehead, to lose both his ears, to pay a fine of 5000*l.*, and to suffer perpetual imprisonment. The dogged puritan employed the leisure of a gaol in writing a fresh libel against the hierarchy. For this, with two other delinquents of the same class, Burton a divine and Bastwick a physician, he stood again at the bar of that terrible tribunal. Their demeanour was what the court deemed intolerably contumacious, arising in fact from the despair of men who knew that no humiliation would procure them mercy.[e] Prynne lost the remainder of his ears in the pillory; and the punishment was inflicted on them all with extreme and designed cruelty, which they endured, as martyrs always endure suffering, so heroically as to excite a deep impression of sympathy and resentment in the assembled multitude.[f] They were sentenced to perpetual confinement in distant prisons. But their departure from London, and their reception on the road, were marked by signal expressions of popular regard; and their friends resorting to them even in Launceston, Chester, and Carnarvon castles, whither they were sent, an order of council was made to transport them to the isles of the Channel. It was the very first act of the long parliament to restore these victims of tyranny to

he thought it no crime for a courtier that lives at a great expense in his attendance to receive a reward to get a business done by a great man in favour. Rush. Abr. ii. 246. It is to be observed that the star-chamber tribunal was almost as infamous for its partiality and corruption as its cruelty. See proofs of this in the same work, p. 241.

[e] The intimidation was so great, that no counsel dared to sign Prynne's plea; yet the court refused to receive it without such signature. Rushworth, ii. 277. Strafford Letters, ii. 74.

[f] Id. 85. Rushw. 295. State Trials. Clarendon, who speaks in a very unbecoming manner of this sentence, admits that it excited general disapprobation. P. 73.

their families. Punishments by mutilation, though not quite unknown to the English law, had been of rare occurrence; and thus inflicted on men whose station appeared to render the ignominy of whipping and branding more intolerable, they produced much the same effect as the still greater cruelties of Mary's reign, in exciting a detestation for that ecclesiastical dominion which protected itself by means so atrocious.

The person on whom public hatred chiefly fell, and who proved in a far more eminent degree than any other individual the evil genius of this unhappy sovereign, was Laud. His talents, though enabling him to acquire a large portion of theological learning, seem to have been by no means considerable. There cannot be a more contemptible work than his Diary;[g] and his letters to Strafford display some smartness, but no great capacity. He managed indeed his own defence, when impeached, with some ability; but on such occasions ordinary men are apt to put forth a remarkable readiness and energy. Laud's inherent ambition had impelled him to court the favour of Buckingham, of Williams, and of both the kings under whom he lived, till he rose to the see of Canterbury on Abbot's death, in 1633. No one can deny that he was a generous patron of letters, and as warm in friendship as in enmity. But he had placed before his eyes the aggrandisement, first of the church, and next of the royal prerogative, as his end and aim in every action. Though not literally destitute of religion, it was so subordinate to worldly interest, and so blended in his mind with the impure alloy of temporal pride, that he became an intolerant persecutor of the puritan clergy, not from bigotry, which in its usual sense he never displayed, but systematic policy. And being subject, as his friends call it, to some infirmities of temper, that is, choleric, vindictive, harsh, and even cruel to a great degree, he not only took a prominent share in the severities of the star-chamber, but, as his correspondence shows, perpetually lamented that he was restrained from going further lengths.[h]

Character of Laud.

[g] [This has lately been republished at Oxford, 1839, under the title 'Autobiography of Archbishop Laud,' with a preface, sufficiently characteristic of its celebrated editor; who has subjoined the 'Acts of his Martyrdom.']

[h] Laud's character is justly and fairly drawn by May, neither in the coarse

Laud's extraordinary favour with the king, through which he became a prime adviser in matters of state, rendered him secretly obnoxious to most of the council, jealous, as ministers must always be, of a churchman's overweening ascendancy. His faults, and even his virtues, contributed to this odium. For, being exempt from the thirst of lucre, and, though in the less mature state of his fortunes a subtle intriguer, having become frank through heat of temper and self-confidence, he discountenanced all schemes to serve the private interest of courtiers at the expense of his master's exhausted treasury, and went right onward to his object, the exaltation of the church and crown. He aggravated the invidiousness of his own situation, and gave an astonishing proof of his influence, by placing Juxon, bishop of London, a creature of his own, in the greatest of all posts, that of lord high-treasurer. Though Williams had lately been lord-keeper of the seal, it seemed more preposterous to place the treasurer's staff in the hands of a churchman, and of one so little distinguished even in his own profession, that the archbishop displayed his contempt of the rest of the council, especially Cottington, who aspired to that post, by such a recommendation.[1]

caricature style of Prynne, nor with the absurdly-flattering pencil of Clarendon. "The Archbishop of Canterbury was a main agent in this fatal work; a man vigilant enough, of an active or rather of a restless mind; more ambitious to undertake than politic to carry on; of a disposition too fierce and cruel for his coat; which, notwithstanding, he was so far from concealing in a subtle way, that he increased the envy of it by insolence. He had few vulgar and private vices, as being neither taxed of covetousness, intemperance, nor incontinence; and in a word a man not altogether so bad in his personal character as unfit for the state of England." History of Parliament, 19.

[1] The following entry appears in Laud's Diary (March 6, 1636):—"Sunday, William Juxon, lord bishop of London, made lord high-treasurer of England: no churchman had it since Henry VII.'s time. I pray God bless him to carry it so that the church may have honour, and the king and the state service and contentment by it. And now, if the church will not hold themselves up under God, I can do no more."

Those who were far from puritanism could not digest this strange elevation. James Howell writes to Wentworth,—"The news that keeps greatest noise here at this present is that there is a new lord-treasurer; and it is news indeed, it being now twice time out of mind since the white robe and the white staff marched together; we begin to live here in the church triumphant; and there wants but one more to keep the king's conscience, which is more proper for a churchman than his coin, to make it a triumvirate." Straff. Letters, i. 522. Garrard, another correspondent, expresses his surprise, and thinks Strafford himself, or Cottington, would have done better: p. 523. And afterwards, vol. ii. p. 2, "The clergy are so high here since the joining of the white sleeves with the white staff, that there is much talk of having as secretary a bishop, Dr. Wren, bishop of Norwich;

He had previously procured the office of secretary of state for Windebank. But, though overawed by the king's infatuated partiality, the faction adverse to Laud were sometimes able to gratify their dislike, or to manifest their greater discretion, by opposing obstacles to his impetuous spirit.

Of these impediments, which a rash and ardent man calls lukewarmness, indolence, and timidity, Lord Strafford. he frequently complains in his correspondence with the lord deputy of Ireland—that lord Wentworth, so much better known by the title of earl of Strafford, which he only obtained the year before his death, that we may give it him by anticipation, whose doubtful fame and memorable end have made him nearly the most conspicuous character of a reign so fertile in recollections. Strafford had in his early years sought those local dignities to which his ambition probably was at that time limited, the representation of the county of York and the post of custos rotulorum, through the usual channel of court favour.[j] Slighted by the duke of Buckingham, and mortified at the preference shown to the head of a rival family, sir John Saville, he began to quit the cautious and middle course he had pursued in parliament, and was reckoned among the opposers of the administration after the accession of Charles.[k] He was

and as chancellor of the exchequer Dr. Bancroft, bishop of Oxford: but this comes only from the young fry of the clergy; little credit is given to it, but it is observed they swarm mightily about the court." The tone of these letters shows that the writer suspected that Wentworth would not be well pleased at seeing a churchman set over his head. But in several of his own letters he positively declares his aversion to the office, and perhaps with sincerity. Ambition was less predominant in his mind than pride and impatience of opposition. He knew that as lord-treasurer he would be perpetually thwarted and undermined by Cottington and others of the council. They, on the other hand, must have dreaded that such a colleague might become their master. Laud himself, in his correspondence with Strafford, never throws out the least hint of a wish that he should succeed Weston, which would have interfered with his own views.

It must be added that Juxon redeemed the scandal of his appointment by an unblemished probity, and gave so little offence in this invidious greatness that the long parliament never attacked him, and he remained in his palace at Fulham without molestation till 1647.

[k] Strafford's Letters, i. 33, &c. The letters of Wentworth in this period of his life show a good deal of ambition and resentment, but no great portion of public spirit. This collection of the Strafford letters forms a very important portion of our historical documents. Hume had looked at them very superficially, and quotes them but twice. They furnished materials to Harris and Macaulay; but the first is little read at present, and the second not at all. In a recent and deservedly popular publication; Macdiarmid's Lives of British Statesmen, the work of a young man of letters, who did

one of those who were made sheriffs of their counties, in order to exclude them from the parliament of 1626. This inspired so much resentment, that he signalized himself as a refuser of the arbitrary loan exacted the next year, and was committed in consequence to prison. He came to the third parliament with a determination to make the court sensible of his power, and possibly with some real zeal for the liberties of his country. But patriotism unhappily, in his self-interested and ambitious mind, was the seed sown among thorns. He had never lost sight of his hopes from the court; even a temporary reconciliation with Buckingham had been effected in 1627, which the favourite's levity soon broke; and he kept up a close connexion with the treasurer Weston. Always jealous of a rival, he contracted a dislike for sir John Eliot, and might suspect that he was likely to be anticipated by that more distinguished patriot in royal favours.[m] The hour of Wentworth's glory was when Charles assented to the Petition of Right, in obtaining which, and in overcoming the king's chicane and the hesitation of the lords, he had been pre-eminently conspicuous. From this moment he started aside from the path of true honour; and, being suddenly elevated to the peerage and a great post, the presidency of the council of the North, commenced a splendid but baleful career, that terminated at the

not live to struggle through the distresses of that profession, the character of Strafford is drawn from the best authorities, and with abundant, perhaps excessive candour. Mr. Brodie has well pointed out that he has obtained more credit for the early period of his parliamentary life than he deserves, by being confounded with Mr. Wentworth, member for Oxford: vol. ii. p. 249. Rushworth has even ascribed to sir Thomas Wentworth the speeches of this Mr. Wentworth in the second parliament of Charles, from which it is notorious that the former had been excluded.

[m] Hacket tells us, in his elegant style, that "sir John Eliot of the west and sir Thomas Wentworth of the north, both in the prime of their age and wits, both conspicuous for able speakers, clashed so often in the house, and cudgelled one another with such strong contradictions, that it grew from an emulation between them to an enmity. The lord-treasurer Weston picked out the northern cock, sir Thomas, to make him the king's creature, and set him upon the first step of his rising; which was wormwood in the taste of Eliot, who revenged himself upon the king in the bill of tonnage, and then fell upon the treasurer, and declaimed against him that he was the author of all the evils under which the kingdom was oppressed." He proceeds to inform us that bishop Williams offered to bring Eliot over, for which Wentworth never forgave him. Life of Williams, p. 82. The magnanimous fortitude of Eliot forbids us to give credit to any surmise unfavourable to his glory upon such indifferent authority; but several passages in Wentworth's letters to Laud show his

scaffold.[n] After this fatal apostasy he not only lost all solicitude about those liberties which the Petition of Right had been designed to secure, but became their deadliest and most shameless enemy.

The council of the North was erected by Henry VIII. after the suppression of the great insurrection of 1536. It had a criminal jurisdiction in Yorkshire and the four more northern counties, as to riots, conspiracies, and acts of violence. It had also, by its original commission, a jurisdiction in civil suits, where either of the parties were too poor to bear the expenses of a process at common law; in which case the council might determine, as it seems, in a summary manner, and according to equity. But this latter authority had been held illegal by the judges under Elizabeth.[o] In fact, the lawfulness of this tribunal in any respect was, to say the least, highly problematical. It was regulated by instructions issued from time to time under the great seal. Wentworth spared no pains to enlarge the jurisdiction of his court. A commission issued in 1632, empowering the council of the North to hear and determine all offences, misdemeanors, suits, debates, controversies, demands, causes, things, and matters whatsoever therein contained, within certain precincts, namely, from the Humber to the Scots frontier. They were specially appointed to hear and determine divers offences, according to the course of the star-chamber, whether provided for by act of parliament or not; to hear complaints according to the rules of the court of chancery, and stay proceedings at common law by injunction; to attach persons by their serjeant in any part of the realm.[p]

These inordinate powers, the soliciting and procuring of which, especially by a person so well versed in the laws and constitution, appears to be of itself a sufficient ground for impeachment, were abused by Strafford to gratify his own pride, as well as to intimidate the opposers of arbitrary measures. Proofs of this occur in the prosecution of sir David Foulis, in that of

malice towards one who had perished in the great cause which he had so basely forsaken.

[n] Wentworth was brought over before the assassination of Buckingham. His patent in Rymer bears date 22nd July, 1625, a month previous to that event.

[o] Fourth Inst. c. 49. See also 13 Reports, 31.

[p] Rymer, xix. 9. Rushworth, ii. 127

Mr. Bellasis, in that of Mr. Maleverer, for the circumstances of which I refer the reader to more detailed history.[q]

Without resigning his presidency of the northern council, Wentworth was transplanted in 1633 to a still more extensive sphere, as lord-deputy of Ireland. This was the great scene on which he played his part; it was here that he found abundant scope for his commanding energy and imperious passions. The Richelieu of that island, he made it wealthier in the midst of exactions, and, one might almost say, happier in the midst of oppressions. He curbed subordinate tyranny; but his own left a sting behind it that soon spread a deadly poison over Ireland. But of his merits and his injustice towards that nation I shall find a better occasion to speak. Two well-known instances of his despotic conduct in respect to single persons may just be mentioned: the deprivation and imprisonment of the lord chancellor Loftus for not obeying an order of the privy council to make such a settlement as they prescribed on his son's marriage—a stretch of interference with private concerns which was aggravated by the suspected familiarity of the lord-deputy with the lady who was to reap advantage from it;[r] and, secondly, the sentence of death passed by a council of war on lord Mountnorris, in Strafford's presence, and evidently at his instigation, on account of some very slight expressions which he had used in private society. Though it was never the deputy's intention to execute this judgment of his slaves, but to

[q] Rushworth. Strafford's Trial, &c. Brodie, ii. 319. Straff. Letters, i. 145. In a letter to lord Doncaster, pressing for a severe sentence on Foulis, who had been guilty of some disrespect to himself as president of the North, Wentworth shows his abhorrence of liberty with all the bitterness of a renegado; and urges the "seasonable correcting at. humour and liberty I find reign in these parts, of observing a superior command no farther than they like themselves, and of questioning any profit of the crown, called upon by his majesty's ministers, which might enable it to subsist of itself, without being necessitated to accept of such conditions as others might easily think to impose upon it." Sept. 1632. Somers Tracts, iv. 198.

[r] Rushworth, Abr. iii. 85. Clarendon. i. 390 (1826). The original editors left out some words which brought this home to Strafford. And if the case was as there seems every reason to believe, I would ask those who talk of this man's innocence whether, in any civilized country, a more outrageous piece of tyranny has been committed by a governor than to compel a nobleman of the highest station to change the disposition of his private estate, because that governor carried on an adulterous intercourse with the daughter-in-law of the person whom he treated thus imperiously?

humiliate and trample upon Mountnorris, the violence and indecency of his conduct in it, his long persecution of the unfortunate prisoner after the sentence, and his glorying in the act at all times, and even on his own trial, are irrefragable proofs of such vindictive bitterness as ought, if there were nothing else, to prevent any good man from honouring his memory.*

The haughty and impetuous primate found a congenial spirit in the lord-deputy. They unbosom to each other, in their private letters, their ardent thirst to promote the king's service by measures of more energy than they were permitted to exercise. Do we think the administration of Charles during the interval of parliaments rash and violent? They tell us it was over-cautious and slow. Do we revolt from the severities of the star-chamber? To Laud and Strafford they seemed the feebleness of excessive lenity. Do we cast on the crown-lawyers the reproach of having betrayed their country's liberties? We may find that, with their utmost servility, they fell far behind the expectations of the court, and their scruples were reckoned the chief shackles on the half-emancipated prerogative.

Correspondence between Laud and Strafford.

The system which Laud was longing to pursue in England, and which Strafford approved, is frequently hinted at by the word Thorough. "For the state," says he, "indeed, my lord, I am for Thorough; for I see that both thick and thin stay somebody, where I conceive it should not, and it is impossible to go thorough alone."† "I am very glad" (in another letter) "to read your lord-

* Clarendon Papers, i. 449, 543, 594. Rushworth, Abridg. iii. 43. Clar. Hist. i. 386 (1826). Strafford Letters, i. 497, et post. This proceeding against lord Mountnorris excited much dissatisfaction in England; those of the council who disliked Strafford making it a pretext to inveigh against his arrogance. But the king, invariably on the severe and arbitrary side, justified the measure, which silenced the courtiers: p. 512. Be it added that the virtuous Charles took a bribe of 6000*l.* for bestowing Mountnorris's office on sir Adam Loftus, not out of distress through the parsimony of parliament, but to purchase an estate in Scotland. Id. 511.

Hume, in extenuating the conduct of Strafford as to Mountnorris's trial, says that, "*sensible of the iniquity of the sentence*, he procured *his majesty's* free pardon to Mountnorris." There is not the slightest evidence to warrant the words in italics; on the contrary, he always justified the sentence, and had most manifestly procured it. The king, in return to a moving petition of lady Mountnorris, permitted his release from confinement, "on making such a submission as my lord-deputy shall approve."

† Strafford Letters, i. 111.

ship so resolute, and more to hear you affirm that the footing of them that go thorough for our master's service is not upon fee, as it hath been. But you are withal upon so many Ifs, that by their help you may preserve any man upon ice, be it never so slippery. As first, if the common lawyers may be contained within their ancient and sober bounds; if the word Thorough be not left out, as I am certain it is; if we grow not faint; if we ourselves be not in fault; if we come not to a peccatum ex te Israel; if others will do their parts as thoroughly as you promise for yourself, and justly conceive of me. Now I pray, with so many and such Ifs as these, what may not be done, and in a brave and noble way? But can you tell when these Ifs will meet, or be brought together? Howsoever I am resolved to go on steadily in the way which you have formerly seen me go; so that (to put in one *if* too), if anything fail of my hearty desires for the king and the church's service, the fault shall not be mine."[u] "As for my marginal note" (he writes in another place), "I see you deciphered it well" (they frequently corresponded in cipher), "and I see you make use of it too; do so still, thorough and thorough. Oh that I were where I might go so too! but I am shackled between delays and uncertainties; you have a great deal of honour here for your proceedings; go on a God's name." "I have done," he says some years afterwards, "with expecting of Thorough on this side."[x]

It is evident that the remissness of those with whom he was joined in the administration, in not adopting or enforcing sufficiently energetic measures, is the subject of the archbishop's complaint. Neither he nor Strafford loved the treasurer Weston, nor lord Cottington, both of whom had a considerable weight in the council. But it is more difficult to perceive in what respects the Thorough system was disregarded. He cannot allude to the church, which he absolutely governed through the high-commission court. The inadequate punishments, as he thought them, imposed on the refractory, formed

[u] Strafford Letters, i. 155.

[x] P. 329. In other letters they complain of what they call the lady Mora, which seems to be a cant word for the inefficient system of the rest of the council, unless it is a personal nickname for Weston.

a part, but not the whole, of his grievance. It appears to me that the great aim of these two persons was to effect the subjugation of the common lawyers. Some sort of tenderness for those constitutional privileges, so indissolubly interwoven with the laws they administered, adhered to the judges, even while they made great sacrifices of their integrity at the instigation of the crown. In the case of habeas corpus, in that of ship-money, we find many of them display a kind of half-compliance, a reservation, a distinction, an anxiety to rest on precedents, which, though it did not save their credit with the public, impaired it at court. On some more fortunate occasions, as we have seen, they even manifested a good deal of firmness in resisting what was urged on them. Chiefly, however, in matter of prohibitions issuing from the ecclesiastical courts, they were uniformly tenacious of their jurisdiction. Nothing could expose them more to Laud's ill-will. I should not deem it improbable that he had formed, or rather adopted from the canonists, a plan, not only of rendering the spiritual jurisdiction independent, but of extending it to all civil causes, unless perhaps in questions of freehold.[y]

[y] The bishops, before the Reformation, issued process from their courts in their own names. By the statute of 1 Edw. VI. c. 2, all ecclesiastical jurisdiction is declared to be immediately from the crown; and it is directed that persons exercising it shall use the king's arms in their seal, and no other. This was repealed under Mary; but her act is itself repealed by 1 Jac. I. c. 25, § 48. This seems to revive the act of Edward. The spiritual courts, however, continued to issue process in the bishop's name, and with his seal. On some difficulty being made concerning this, it was referred by the star-chamber to the twelve judges, who gave it under their hands that the statute of Edward was repealed, and that the practice of the ecclesiastical courts in this respect was agreeable to law. Neal, 589. Kennet, 92. Rush. Abr. iii. 340. Whitelock says, p. 22, that the bishops all denied that they held their jurisdiction from the king, for which they were liable to heavy penalties. This question is of little consequence, for it is still true that ecclesiastical jurisdiction, according to the law, emanates from the crown; nor does anything turn on the issuing of process in the bishop's name, any more than on the holding courts-baron in the name of the lord. In Ireland, unless I am mistaken, the king's name is used in ecclesiastical proceedings. Laud, in his famous speech in the star-chamber, 1637, and again on his trial, asserts episcopal jurisdiction (except what is called in foro contentioso) to be of divine right; a doctrine not easily reconcilable with the crown's supremacy over *all* causes under the statute of Elizabeth; since any spiritual censure may be annulled by a lay tribunal, the commission of delegates; and how this can be compatible with a divine authority in the bishop to pronounce it, seems not easy to prove. Laud, I have no doubt, would have put an end to this badge of subordination to the crown. The judges in Cawdrey's case, 5 Reports, held a very different language; nor would

The presumption of common lawyers, and the difficulties they threw in the way of the church and crown, are frequent themes with the two correspondents. "The church," says Laud, "is so bound up in the forms of the common law, that it is not possible for me or for any man to do that good which he would, or is bound to do. For your lordship sees, no man clearer, that they which have gotten so much power in and over the church will not let go their hold; they have indeed fangs with a witness, whatsoever I was once said in a passion to have."[z] Strafford replies, "I know no reason but you may as well rule the common lawyers in England as I, poor beagle, do here; and yet that I do, and will do, in all that concerns my master, at the peril of my head. I am confident that the king, being pleased to set himself in the business, is able, by his wisdom and ministers, to carry any just and honourable action through all imaginary opposition, for real there can be none; that to start aside for such panic fears, fantastic apparitions, as a Prynne or an Eliot shall set up, were the meanest folly in the whole world; that, the debts of the crown being taken off, you may govern as you please; and most resolute I am that the work may be done without borrowing any help forth of the king's lodgings, and that it is as downright a peccatum ex te Israel as ever was, if all this be not effected with speed and ease."[a]—Strafford's indignation at the lawyers breaks out on other occasions. In writing to lord Cottington he complains of a judge of assize who had refused to receive the king's instructions to the council of the North in evidence, and beseeches that he may be charged with this great misdemeanor before the council-board. "I confess," he says, "I disdain to see the gownmen in this sort hang their noses over the flowers of the crown."[b] It was his endeavour in Ireland, as

Elizabeth have borne this assumption of the prelates as tamely as Charles, in his poor-spirited bigotry, seems to have done. Stillingfleet, though he disputes at great length the doctrine of lord Coke, in his fifth Report, as to the extent of the royal supremacy before the first of Elizabeth, fully admits that, since the statute of that year, the authority for keeping courts, in whose name soever they may be held, is derived from the king. Vol. iii. 768, 778.

This arrogant contempt of the lawyers manifested by Laud and his faction of priests led to the ruin of the great churchmen, and of the church itself—by the hands, chiefly, of that powerful body they had insulted, as Clarendon has justly remarked.

[z] Strafford Letters, i. 111.

[a] P. 173. [b] P. 129.

well as in Yorkshire, to obtain the right of determining civil suits. "I find," he says, "that my lord Falkland was restrained by proclamation not to meddle in any cause between party and party, which did certainly lessen his power extremely: I know very well the common lawyers will be passionately against it, who are wont to put such a prejudice upon all other professions, as if none were to be trusted or capable to administer justice but themselves; yet how well this suits with monarchy, when they monopolize all to be governed by their year-books, you in England have a costly experience; and I am sure his majesty's absolute power is not weaker in this kingdom, where hitherto the deputy and council-board have had a stroke with them."[c] The king indulged him in this, with a restriction as to matters of inheritance.

The cruelties exercised on Prynne and his associates have generally been reckoned among the great reproaches of the primate. It has sometimes been insinuated that they were rather the act of other counsellors than his own. But his letters, as too often occurs, belie this charitable excuse. He expresses in them no sort of humane sentiment towards these unfortunate men, but the utmost indignation at the oscitancy of those in power, which connived at the public demonstrations of sympathy. "A little more quickness," he says, "in the government would cure this itch of libelling. But what can you think of Thorough when there shall be such slips in business of consequence? What say you to it, that Prynne and his fellows should be suffered to talk what they pleased while they stood in the pillory, and win acclamations from the people, &c.? By that which I have above written, your lordship will see that the Triumviri will be far enough from being kept dark. It is true that, when this business is spoken of, some men speak as your lordship writes, that it concerns the king and government more than me. But when anything comes to be acted against them, be it but the execution of a sentence, in which lies the honour and safety of all justice, yet there is little or nothing done, nor shall I ever live to see it otherwise."[d]

The lord-deputy fully concurred in this theory of

[c] Strafford Letters, i. 201. See also p. 223.

[d] Vol. ii. p. 100.

vigorous government. They reasoned on such subjects as cardinal Granville and the duke of Alva had reasoned before them. "A prince," he says in answer, "that loseth the force and example of his punishments, loseth withal the greatest part of his dominion. If the eyes of the Triumviri be not sealed so close as they ought, they may perchance spy us out a shrewd turn when we least expect it. I fear we are hugely mistaken, and misapply our charity thus pitying of them, where we should indeed much rather pity ourselves. It is strange indeed," he observes in another place, "to see the frenzy which possesseth the vulgar now-a-days, and that the just displeasure and chastisement of a state should produce greater estimation, nay reverence, to persons of no consideration either for life or learning, than the greatest and highest trust and employments shall be able to procure for others of unspotted conversation, of most eminent virtues and deepest knowledge: a grievous and overspreading leprosy! but where you mention a remedy, sure it is not fitted for the hand of every physician; the cure under God must be wrought by one Æsculapius alone, and that in my weak judgment to be effected rather by corrosives than lenitives: less than Thorough will not overcome it; there is a cancerous malignity in it, which must be cut forth, which long since rejected all other means, and therefore to God and him I leave it."*

The honourable reputation that Strafford had earned before his apostasy stood principally on two grounds: his refusal to comply with a requisition of money without consent of parliament, and his exertions in the Petition of Right, which declared every such exaction to be contrary to law. If any, therefore, be inclined to palliate his arbitrary proceedings and principles in the executive administration, his virtue will be brought to a test in the business of ship-money. If he shall be found to have given countenance and support to that measure, there must be an end of all pretence to integrity or patriotism. But of this there are decisive proofs. He not only made every exertion to enforce its payment in Yorkshire during the years 1639 and 1640, for which the

* Strafford Letters, ii 136.

peculiar dangers of that time might furnish some apology, but long before, in his correspondence with Laud, speaks thus of Mr. Hampden, deploring, it seems, the supineness that had permitted him to dispute the crown's claim with impunity. "Mr. Hampden is a great brother [*i. e.* a puritan], and the very genius of that people leads them always to oppose, as well civilly as ecclesiastically, all that ever authority ordains for them; but in good faith, were they right served, they should be whipt home into their right wits, and much beholden they should be to any one that would thoroughly take pains with them in that kind."[f] "In truth, I still wish, and take it also to be a very charitable one, Mr. H. and others to his likeness were well whipt into their right senses; if that the rod be so used as that it smarts not, I am the more sorry."[g]

Hutton, one of the judges who had been against the crown in this case, having some small favour to ask of Strafford, takes occasion in his letter to enter on the subject of ship-money, mentioning his own opinion in such a manner as to give the least possible offence, and with all qualifications in favour of the crown; commending even lord Finch's argument on the other side.[h] The lord-deputy, answering his letter after much delay, says, "I must confess, in a business of so mighty importance, I shall the less regard the forms of pleading, and do conceive, as it seems my lord Finch pressed, that the power of levies of forces at sea and land for the very, not feigned, relief and safety of the public, is a property of sovereignty, as, were the crown willing, it could not divest it thereof; Salus populi suprema lex; nay, in cases of extremity, even above acts of parliament," &c.

It cannot be forgotten that the loan of 1626, for refusing which Wentworth had suffered imprisonment, had been demanded in a season of incomparably greater difficulty than that when ship-money was levied: at the one time war had been declared against both France and Spain, at the other the public tranquillity was hardly interrupted by some bickerings with Holland. In avowing therefore the king's right to levy money in

[f] Strafford Letters, ii. 138. [g] P. 158. [h] P. 178.

cases of exigency, and to be the sole judge of that exigency, he uttered a shameless condemnation of his former virtues. But lest any doubt should remain of his perfect alienation from all principles of limited monarchy, I shall produce still more conclusive proofs. He was strongly and wisely against the war with Spain, into which Charles's resentment at finding himself the dupe of that power in the business of the Palatinate nearly hurried him in 1637. At this time Strafford laid before the king a paper of considerations dissuading him from this course, and pointing out particularly his want of regular troops.[1] "It is plain, indeed," he says, "that the opinion delivered by the judges, declaring the lawfulness of the assessment for the shipping, is the greatest service that profession hath done the crown in my time. But unless his majesty hath the like power declared to raise a land army upon the same exigent of state, the crown seems to me to stand but upon one leg at home, to be considerable but by halves to foreign powers. Yet this sure methinks convinces a power for the sovereign to raise payments for land forces, and consequently submits to his wisdom and ordinance the transporting of the money or men into foreign states. Seeing, then, that this piece well fortified for ever vindicates the royalty at home from under the conditions and restraints of subjects, renders us also abroad even to the greatest kings the most considerable monarchy in Christendom; seeing, again, this is a business to be attempted and won from the subject in time of peace only, and the people first accustomed to these levies, when they may be called upon as by way of prevention for our future safety, and keep his majesty thereby also moderator of the peace of Christendom, rather than upon the bleeding evil of an instant and active war; I beseech you, what piety to alliances is there that should divert a great and wise king forth of a path which leads so manifestly, so directly, to the establishing his own throne, and the secure and independent seating of himself and posterity in wealth, strength, and glory, far above any their progenitors, verily in such a condition as there were no more hereafter to be wished them in this world but that

[1] Strafford Letters, ii. 60.

they would be very exact in their care for the just and moderate government of their people, which might minister back to them again the plenties and comforts of life, that they would be most searching and severe in punishing the oppressions and wrongs of their subjects, as well in the case of the public magistrate as of private persons; and, lastly, to be utterly resolved to exercise this power only for public and necessary uses; to spare them as much and often as were possible; and that they never be wantonly vitiated or misapplied to any private pleasure or person whatsoever? This being, indeed, the very only means to preserve, as may be said, the chastity of these levies, and to recommend their beauty so far forth to the subject, as, being thus disposed, it is to be justly hoped they will never grudge the parting with their moneys. . . . .

"Perhaps it may be asked, where shall so great a sum be had? My answer is, Procure it from the subjects of England, and profitably for them too. By this means preventing the raising upon them a land army for defence of the kingdom, which would be by many degrees more chargeable; and hereby also insensibly gain a precedent, and settle an authority and right in the crown to levies of that nature, which thread draws after it many huge and great advantages, more proper to be thought on at some other seasons than now."

It is, however, remarkable that, with all Strafford's endeavours to render the king absolute, he did not intend to abolish the use of parliaments. This was apparently the aim of Charles; but, whether from remains of attachment to the ancient forms of liberty surviving amidst his hatred of the real essence, or from the knowledge that a well-governed parliament is the best engine for extracting money from the people, this able minister entertained very different views. He urged accordingly the convocation of one in Ireland, pledging himself for the experiment's success. And in a letter to a friend, after praising all that had been done in it, "Happy it were," he proceeds, "if we might live to see the like in England: everything in its season; but in some cases it is as necessary there be a time to forget, as in others to learn; and howbeit the peccant (if I may without offence so term it) humour be not yet wholly purged forth,

yet do I conceive it in the way, and that, once rightly corrected and prepared, we may hope for a parliament of a sound constitution indeed; but this must be the work of time, and of his majesty's excellent wisdom; and this time it becomes us all to pray for and wait for, and, when God sends it, to make the right use of it."[k]

These sentiments appear honourable and constitutional. But let it not be hastily conceived that Strafford was a friend to the necessary and ancient privileges of those assemblies to which he owed his rise. A parliament was looked upon by him as a mere instrument of the prerogative. Hence he was strongly against permitting any mutual understanding among its members, by which they might form themselves into parties, and acquire strength and confidence by previous concert. "As for restraining any private meetings either before or during parliament, saving only publicly in the house, I fully rest in the same opinion, and shall be very watchful and attentive therein as a means which may rid us of a great trouble, and prevent many stones of offence, which otherwise might by malignant spirits be cast in among us."[m] And, acting on this principle, he kept a watch on the Irish parliament to prevent those intrigues which his experience in England had taught him to be the indispensable means of obtaining a control over the crown. Thus fettered and kept in awe, no one presuming to take a lead in debate from uncertainty of support, parliaments would have become such mockeries of their venerable name as the joint contempt of the court and nation must soon have annihilated. Yet so difficult is it to preserve this dominion over any representative body, that the king judged far more discreetly than Strafford in desiring to dispense entirely with their attendance.

The passages which I have thus largely quoted will, I trust, leave no doubt in any reader's mind that the earl of Strafford was party in a conspiracy to subvert the fundamental laws and liberties of his country. For here are not, as on his trial, accusations of words spoken in heat, uncertain as to proof, and of ambiguous interpretation; nor of actions variously reported and capable of some explanation; but the sincere unbosoming of the heart in

[k] Strafford Letters, i. 420. [m] P. 246; see also p. 370.

letters never designed to come to light. And if we reflect upon this man's cool-blooded apostasy on the first lure to his ambition, and on his splendid abilities, which enhanced the guilt of that desertion, we must feel some indignation at those who have palliated all his iniquities, and even ennobled his memory with the attributes of patriot heroism. Great he surely was, since that epithet can never be denied without paradox to so much comprehension of mind, such ardour and energy, such courage and eloquence; those commanding qualities of soul, which, impressed upon his dark and stern countenance, struck his contemporaries with mingled awe and hate, and still live in the unfading colours of Vandyke.[a] But it may be reckoned as a sufficient ground for distrusting any one's attachment to the English constitution, that he reveres the name of the earl of Strafford.

Conduct of Laud in the church prosecution of puritans.

It was perfectly consonant to Laud's temper and principles of government to extirpate, as far as in him lay, the lurking seeds of disaffection to the Anglican church. But the course he followed could in nature have no other tendency than to give them nourishment. His predecessor Abbot had perhaps connived to a limited extent at some irregularities of discipline in the puritanical clergy, judging not absurdly that their scruples at a few ceremonies, which had been aggravated by a vexatious rigour, would die away by degrees and yield to that centripetal force, that moral attraction towards uniformity and obedience to custom, which Providence has rendered one of the great preservatives of political society. His hatred to popery and zeal for Calvinism, which undoubtedly were narrow and intolerant, as well as his avowed disapprobation of those churchmen who preached up arbitrary power, gained for this prelate the favour of the party denominated puritan. In all these respects no man could be more opposed to Abbot than his successor. Besides reviving the prosecutions for nonconformity in their utmost strictness, wherein many of the other bishops vied with their primate,

[a] The unfavourable physiognomy of Strafford is noticed by writers of that time. Somers Tracts, iv. 231. It did not prevent him from being admired by the fair sex, especially at his trial, where, May says, they were all on his side. The portraits by Vandyke at Wentworth and Petworth are well known; the latter appears eminently characteristic.

he most injudiciously, not to say wickedly, endeavoured, by innovations of his own, and by exciting alarms in the susceptible consciences of pious men, to raise up new victims whom he might oppress. Those who made any difficulty about his novel ceremonies, or even who preached on the Calvinistic side, were harassed by the high-commission court as if they had been actual schismatics.[o] The most obnoxious, if not the most indefensible, of these prosecutions were for refusing to read what was called the Book of Sports; namely, a proclamation, or rather a renewal of that issued in the late reign, that certain feasts or wakes might be kept, and a great variety of pastimes used on Sundays after evening service.[p] This was reckoned, as I have already observed, one of the tests of puritanism. But whatever superstition there might be in that party's judaical observance of the day they called the sabbath, it was in itself preposterous, and tyrannical in its intention, to enforce the reading in churches of this licence, or rather recommendation, of festivity. The precise clergy refused in general to comply with the requisition, and were suspended or deprived in consequence. Thirty of them were excommunicated in the single diocese of Norwich; but as that part of England was rather conspicuously puritanical, and the bishop, one Wren, was the worst on the bench, it is highly probable that the general average fell short of this.[q]

[o] See the cases of Workman, Peter Smart, &c., in the common histories: Rushworth, Rapin, Neal, Macaulay, Brodie, and even Hume, on one side; and for what can be said on the other, Collier, and Laud's own defence on his trial. A number of persons, doubtless inclining to the puritan side, had raised a sum of money to buy up impropriations, which they vested in trustees for the purpose of supporting lecturers; a class of ministers to whom Laud was very averse. He caused the parties to be summoned before the star-chamber, where their association was dissolved, and the impropriations already purchased were confiscated to the crown. Rushworth, Abr. ii. 17; Neal, i. 556.

[p] This originated in an order made at the Somerset assizes by chief justice Richardson, at the request of the justices of peace, for suppressing these feasts, which had led to much disorder and profaneness. Laud made the privy council reprove the judge, and direct him to revoke the order. Kennet, p. 71; Rushw. Abr. ii. 166. Heylin says the gentlemen of the county were against Richardson's order, which is one of his habitual falsehoods. See Rushw. Abr. ii. 167. I must add, however, that the proclamation was perfectly legal, and according to the spirit of the late act, 1 Car. I. c. 1, for the observance of the Lord's day. It has been rather misrepresented by those who have not attended to its limitations, as Neal and Mr. Brodie. Dr. Lingard, ix. 422, has stated the matter rightly.

[q] Neal, 569; Rushworth, Abr. ii. 166; Collier, 758; Heylin's Life of Laud, 241, 290. The last writer extenuates the persecution by Wren; but it is evident by his own account that no suspension or censure was taken off till the party conformed and read the declaration.

Besides the advantage of detecting a latent bias in the clergy, it is probable that the high-church prelates had a politic end in the Book of Sports. The morose gloomy spirit of puritanism was naturally odious to the young and to men of joyous tempers. The comedies of that age are full of sneers at its formality. It was natural to think that, by enlisting the common propensities of mankind to amusement on the side of the established church, they might raise a diversion against that fanatical spirit which can hardly long continue to be the prevailing temperament of a nation. The church of Rome, from which no ecclesiastical statesman would disdain to take a lesson, had for many ages perceived, and acted upon the principle, that it is the policy of governments to encourage a love of pastime and recreation in the people, both because it keeps them from speculating on religious and political matters, and because it renders them more cheerful and less sensible to the evils of their condition; and it may be remarked by the way, that the opposite system so long pursued in this country, whether from a puritanical spirit or from the wantonness of petty authority, has no such grounds of policy to recommend it. Thus much at least is certain, that, when the puritan party employed their authority in proscribing all diversions, in enforcing all the Jewish rigour about the sabbath, and gave that repulsive air of austerity to the face of England of which so many singular illustrations are recorded, they rendered their own yoke intolerable to the youthful and gay; nor did any other cause perhaps so materially contribute to bring about the Restoration. But mankind love sport as little as prayer by compulsion; and the immediate effect of the king's declaration was to produce a far more scrupulous abstinence from diversions on Sundays than had been practised before.

The resolution so evidently taken by the court to admit of no half-conformity in religion, especially after Laud had obtained an unlimited sway over the king's mind, convinced the puritans that England could no longer afford them an asylum. The state of Europe was not such as to encourage their emigration, though many were well received in Holland. But, turning their eyes to the newly-discovered regions beyond the Atlantic Ocean, they saw a secure place of refuge from present tyranny, and a boundless prospect for future hope. They

obtained from the crown the charter of Massachusetts Bay in 1629. About three hundred and fifty persons, chiefly or wholly of the independent sect, sailed with the first fleet. So many followed in the subsequent years that these New England settlements have been supposed to have drawn near half a million of money from the mother-country before the civil wars.[r] Men of a higher rank than the first colonists, and now become hopeless alike of the civil and religious liberties of England, men of capacious and commanding minds, formed to be the legislators and generals of an infant republic, the wise and cautious lord Say, the acknowledged chief of the independent sect; the brave, open, and enthusiastic lord Brook; sir Arthur Haslerig; Hampden, ashamed of a country for whose rights he had fought alone; Cromwell, panting with energies that he could neither control nor explain, and whose unconquerable fire was still wrapped in smoke to every eye but that of his kinsman Hampden, were preparing to embark for America, when Laud, for his own and his master's curse, procured an order of council to stop their departure.[s] Besides the reflections which such an instance of destructive infatuation must suggest, there are two things not unworthy to be remarked: first, that these chiefs of the puritan sect, far from entertaining those schemes of overturning the government at home that had been imputed to them, looked only in 1638 to escape from imminent tyranny; and, secondly, that the views of the archbishop were not so much to render the church and crown secure from the attempts of disaffected men, as to gratify a malignant humour by persecuting them.

These severe proceedings of the court and hierarchy became more odious on account of their suspected leaning, or at least notorious indulgence, towards

[r] Neal, p. 546. I do not know how he makes his computation.

[s] A proclamation, dated May 1, 1638, reciting that the king was informed that many persons went yearly to New England, in order to be out of the reach of ecclesiastical authority, commands that no one shall pass without a licence and a testimonial of conformity from the minister of his parish. Rymer, xx. 223. Laud, in a letter to Strafford, ii. 169, complains of men running to New England when there was a want of them in Ireland. And why did they so, but that any trackless wilderness seemed better than his own or his friend's tyranny? In this letter he laments that he is left alone in the envious and thorny part of the work, and has no encouragement.

popery. With some fluctuations, according to circumstances or changes of influence in the council, the policy of Charles was to wink at the domestic exercise of the catholic religion, and to admit its professors to pay compositions for recusancy which were not regularly enforced.[t] The catholics willingly submitted to this mitigated rigour, in the sanguine expectation of far more prosperous days. I shall, of course, not censure this part of his administration. Nor can we say that the connivance at the resort of catholics to the queen's chapel in Somerset House, though they used it with much ostentation, and so as to give excessive scandal, was any more than a just sense of toleration would have dictated.[u] Unfortunately the prosecution of other sectaries renders it difficult to ascribe such a liberal principle to the council of Charles I. It was evidently true, what the nation saw with alarm, that a proneness to favour the professors of this religion, and to a considerable degree the religion itself, was at the bottom of a conduct so inconsistent with their system of government. The king had been persuaded in 1635, through the influence of the queen, and probably of Laud,[x] to receive privately, as an accredited agent from the court of Rome, a secular priest, named Panzani, whose ostensible instructions were to effect a reconciliation of some violent differences that

Favour shown to catholics — Tendency to their religion.

Expectations entertained by them.

Mission of Panzani.

[t] In thirteen years, ending with 1640, but 40801. was levied on recusants by process from the exchequer, according to Commons' Journals, 1 Dec. 1640. But it cannot be denied that they paid considerable sums by way of composition, though less probably than in former times. Lingard, ix. 424, &c., note G. Weston is said by Clarendon to have offended the catholics by enforcing penalties to raise the revenue. One priest only was executed for religion before the meeting of the long parliament. Butler, iv. 97. And, though, for the sake of appearance, proclamations for arresting priests and recusants sometimes came forth, they were always discharged in a short time. The number pardoned in the first sixteen years of the king is said to have amounted, in twenty-nine counties only, to 11,970. Neal. 604.—Clarendon, i. 261, confirms the systematic indulgence shown to catholics which Dr. Lingard seems, reluctantly and by silence, to admit.

[u] Strafford Letters, i. 505, 524; ii. 2, 57.

[x] Heylin, 286. The very day of Abbot's death an offer of a cardinal's hat was made to Laud, as he tells us in his Diary, "by one that avowed ability to perform it." This was repeated some days afterwards; Aug. 4th and 17th, 1633. It seems very questionable whether this came from authority. The new primate made a strange answer to the first application, which might well encourage a second; certainly not what might have been expected from a steady protestant. If we did not read this in his own Diary we should not believe it. The offer at least proves that he was supposed capable of acceding to it.

had long subsisted between the secular and regular clergy of his communion. The chief motive, however, of Charles was, as I believe, so far to conciliate the pope as to induce him to withdraw his opposition to the oath of allegiance, which had long placed the catholic laity in a very invidious condition, and widened a breach which his majesty had some hopes of closing. For this purpose he offered any reasonable explanation which might leave the oath free from the slightest appearance of infringing the papal supremacy. But it was not the policy of Rome to make any concession, or even enter into any treaty, that might tend to impair her temporal authority. It was better for her pride and ambition that the English catholics should continue to hew wood and draw water, their bodies the law's slaves, and their souls her own, than, by becoming the willing subjects of a protestant sovereign, that they should lose that sense of dependency and habitual deference to her commands in all worldly matters, which states wherein their faith stood established had ceased to display. She gave, therefore, no encouragement to the proposed explanations of the oath of allegiance, and even instructed her nuncio Con, who succeeded Panzani, to check the precipitance of the English catholics in contributing men and money towards the army raised against Scotland in 1639.[y] There might indeed be some reasonable suspicion that the court did not play quite fairly with this body, and was more eager to extort what it could from their hopes than to make any substantial return.

The favour of the administration, as well as the antipathy that every parliament had displayed towards them, not unnaturally rendered the catholics, for the most part, assertors of the king's arbitrary power.[z] This again in-

[y] Clarendon State Papers, ii. 44. It is always important to distinguish dates. By the year 1639 the court of Rome had seen the fallacy of those hopes she had previously been led to entertain, that the king and church of England would return to her fold. This might exasperate her against him, as it certainly did against Laud; besides which, I should suspect the influence of Spain in the conclave.

[z] Proofs of this abound in the first volume of the collection just quoted, as well as in other books. The catholics were not indeed unanimous in the view they took of the king's prerogative, which became of importance in the controversy as to the oath of allegiance; one party maintaining that the king had a right to put his own explanation on that oath, which was more to be regarded than the sense of parliament; while another denied that they could conscientiously admit the king's interpretation against what they knew to have been the intention of the

creased the popular prejudice. But nothing excited so much alarm as the perpetual conversions to their faith. These had not been quite unusual in any age since the Reformation, though the balance had been very much inclined to the opposite side. They became, however, under Charles the news of every day; protestant clergymen in several instances, but especially women of rank, becoming proselytes to a religion so seductive to the timid reason and susceptible imagination of that sex. They whose minds have never strayed into the wilderness of doubt vainly deride such as sought out the beaten path their fathers had trodden in old times; they whose temperament gives little play to the fancy and sentiment want power to comprehend the charm of superstitious illusions, the satisfaction of the conscience in the performance of positive rites, especially with privation or suffering, the victorious self-gratulation of faith in its triumph over reason, the romantic tenderness that loves to rely on female protection, the graceful associations of devotion with all that the sense or the imagination can require,—the splendid vestment, the fragrant censer, the sweet sounds of choral harmony, and the sculptured form that an intense piety half endows with life. These springs were touched, as the variety of human character might require, by the skilful hands of Romish priests, chiefly jesuits, whose numbers in England were about 250,[a] concealed under a lay garb, and combining the courteous manners of gentlemen with a refined experience of mankind, and a logic in whose labyrinths the most practical reasoner was perplexed. Against these fascinating wiles the puritans opposed other weapons from the same armoury of human nature; they awakened the pride of reason, the stern obstinacy of dispute, the names,

legislature who imposed it. A Mr. Courtney, who had written on the later side, was imprisoned in the Tower, on pretext of recusancy, but really for having promulgated so obnoxious an opinion. P. 258, et alibi; Memoirs of Panzani, p. 140. The jesuits were much against the oath, and, from whatever cause, threw all the obstacles they could in the way of a good understanding between the king and the pope. One reason was their apprehension that an article of the treaty would be the appointment of a catholic bishop in England; a matter about which the members of that church have been quarrelling ever since the reign of Elizabeth, but too trifling for our notice in this place. More than half Panzani's Memoirs relate to it.

[a] Memoirs of Panzani, p. 207. This is a statement by father Leander; in another place, p. 140, they are reckoned at 360. There were about 180 other regulars, and five or six hundred secular priests.

so soothing to the ear, of free inquiry and private judgment. They inspired an abhorrence of the adverse party that served as a barrier against insidious approaches. But far different principles actuated the prevailing party in the church of England. A change had for some years been wrought in its tenets, and still more in its sentiments, which, while it brought the whole body into a sort of approximation to Rome, made many individuals shoot as it were from their own sphere, on coming within the stronger attraction of another.

The charge of inclining towards popery, brought by one of our religious parties against Laud and his colleagues with invidious exaggeration, has been too indignantly denied by another. Much indeed will depend on the definition of that obnoxious word; which one may restrain to an acknowledgment of the supremacy in faith and discipline of the Roman see; while another comprehends in it all those tenets which were rejected as corruptions of Christianity at the Reformation; and a third may extend it to the ceremonies and ecclesiastical observances which were set aside at the same time. In this last and most enlarged sense, which the vulgar naturally adopted, it is notorious that all the innovations of the school of Laud were so many approaches, in the exterior worship of the church, to the Roman model. Pictures were set up or repaired; the communion-table took the name of an altar; it was sometimes made of stone; obeisances were made to it; the crucifix was sometimes placed upon it; the dress of the officiating priests became more gaudy; churches were consecrated with strange and mystical pageantry.[b] These petty superstitions, which would of themselves have disgusted a nation accustomed to despise as well as abhor the pompous rites of the catholics, became more alarming from the evident bias of some leading churchmen to parts of the Romish theology. The doctrine of a real presence, distinguishable only by vagueness of definition

b Kennet, 73; Harris's Life of Charles, 220; Collier, 772; Brodie, ii. 224, note; Neal, p. 572, &c. Laud, in his defence at his trial, denies or extenuates some of the charges. There is, however, full proof of all that I have said in my text. The famous consecration of St. Catharine's Creed church in 1631 is mentioned by Rushworth, Welwood, and others. Laud said in his defence that he borrowed the ceremonies from Andrews, who had found them in some old liturgy.

from that of the church of Rome, was generally held.[c] Montagu, bishop of Chichester, already so conspicuous, and justly reckoned the chief of the Romanising faction, went a considerable length towards admitting the invocation of saints; prayers for the dead, which lead naturally to the tenet of purgatory, were vindicated by many; in fact, there was hardly any distinctive opinion of the church of Rome which had not its abettors among the bishops, or those who wrote under their patronage. The practice of auricular confession, which an aspiring clergy must so deeply regret, was frequently inculcated as a duty. And Laud gave just offence by a public declaration that in the disposal of benefices he should, in equal degrees of merit, prefer single before married priests.[d] They incurred scarcely less odium by their dislike of the Calvinistic system, and by what ardent men construed into a dereliction of the protestant cause, a more

[c] In Bishop Andrews's answer to Bellarmine he says, "Præsentiam credimus non minus quam vos veram; de modo præsentiæ nil temere definimus." And soon afterwards, "Nobis vobiscum de objecto convenit, de modo lis omnis est. Do hoc est, fide firmâ tenemus quod sit, de hoc modo est, ut sit Per, sive In, sive Cum, sive Sub, sive Trans; nullum inibi verbum est." I quote from Casaubon's Epistles, p. 393. This is, reduced to plain terms,—We fully agree with you that Christ's body is actually present in the sacramental elements, in the same sense as you use the word; but we see no cause for determining the precise mode, whether by transubstantiation or otherwise.

The doctrine of the church of England, as evidenced by its leading ecclesiastics, underwent a change in the reign of James, through Andrews, Casaubon, and others, who deferred wholly to antiquity. In fact, as I have elsewhere observed, there can be but two opinions, neglecting subordinate differences, on this famous controversy. It is clear to those who have attended to the subject that the Anglican reformers did not hold a local presence of Christ's human body in the consecrated bread itself, independent of the communicant, or, as the technical phrase was, extra usum: and it is also clear that the divines of the latter school did so. This question is rendered intricate at first sight, partly by the strong figurative language which the early reformers employed in order to avoid shocking the prejudices of the people; and partly by the incautious and even absurd use of the word *real presence* to mean *real absence*; which is common with modern theologians.

[The phrase "real presence" is never, I believe, used by our writers of the 16th age, but as synonymous with corporal, and consequently is condemned by them. Cranmer calls it "that error of the real presence," i. lxxv. Jewel challenges his adversary to produce any authority for those words from the fathers. I do not know when it came into use; probably under James, or, it may be, rather earlier.]

[d] Heylin's Life of Laud, p. 212. He probably imbibed this, like many other of his prejudices, from bishop Andrews, whose epitaph in the church of St. Saviour's in Southwark speaks of him as having received a superior reward in heaven on account of his celibacy; cælebs migravit ad aureolam cœlestem. Biog. Britannica. Aureola, a word of no classical authority, means, in the style of popish divinity which the author of this epitaph thought fit to employ, the crown of virginity. See Du Cange in voc.

reasonable and less dangerous theory on the nature and reward of human virtue than that which the fanatical and presumptuous spirit of Luther had held forth as the most fundamental principle of his Reformation.

It must be confessed that these English theologians were less favourable to the papal supremacy than to most other distinguishing tenets of the catholic church. Yet even this they were inclined to admit in a considerable degree, as a matter of positive, though not divine, institution; content to make the doctrine and discipline of the fifth century the rule of their bastard reform. An extreme reverence for what they called the primitive church had been the source of their errors. The first reformers had paid little regard to that authority. But as learning, by which was then meant an acquaintance with ecclesiastical antiquity, grew more general in the church, it gradually inspired more respect for itself; and men's judgment in matters of religion came to be measured by the quantity of their erudition.[e] The sentence of the early writers, including the fifth and perhaps sixth centuries, if it did not pass for infallible, was of prodigious weight in controversy. No one in the English church seems to have contributed so much towards this relapse into superstition as Andrews, bishop of Winchester, a man of eminent learning in this kind, who may be reckoned the founder of the school wherein Laud was the most prominent disciple.[f]

A characteristic tenet of this party was, as I have already observed, that episcopal government was indispensably requisite to a Christian church.[g] Hence they

[e] See Life of Hammond in Wordsworth's Eccles. Biography, vol. v. 343. It had been usual to study divinity in compendiums, chiefly drawn up in the sixteenth century. King James was a great favourer of antiquity, and prescribed the study of the fathers in his Instructions to the Universities in 1616.

[f] Andrews gave scandal in the queen's reign by preaching at court "that contrition, without confession and absolution, and deeds worthy of repentance, was not sufficient; that the ministers had the two keys of power and knowledge delivered unto them; that whose sins soever they remitted upon earth should be remitted in heaven.—The court is full of it, for such doctrine was not usually taught there." Sidney, Letters, ii. 185. Harrington also censures him for an attempt to bring in auricular confession. Nugæ Antiquæ, ii. 192. In his own writings against Perron he throws away a great part of what have always been considered the protestant doctrines.

[g] Hall, bishop of Exeter, a very considerable person, wrote a treatise on the Divine Institution of Episcopacy, which, according to an analysis given by Heylin and others of its leading positions, is so much in the teeth of Hooker's Ecclesiastical Polity, that it might pass for an

treated the presbyterians with insolence abroad and severity at home. A brief to be read in churches for the sufferers in the Palatinate having been prepared, wherein they were said to profess the same religion as ourselves, Laud insisted on this being struck out.[h] The Dutch and Walloon churches in England, which had subsisted since the Reformation, and which various motives of policy had led Elizabeth to protect, were harassed by the primate and other bishops for their want of conformity to the Anglican ritual.[i] The English ambassador, instead of frequenting the Hugonot church at Charenton, as had been the former practice, was instructed to disclaim all fraternity with their sect, and set up in his own chapel the obnoxious altar and the other innovations of the hierarchy.[k] These impolitic and insolent proceedings gave the foreign protestants a hatred of Charles, which they retained through all his misfortunes.

This alienation from the foreign churches of the reformed persuasion had scarcely so important an effect in begetting a predilection for that of Rome, as the lan-

answer to it. Yet it did not quite come up to the primate's standard, who made him alter some passages which looked too like concessions. Heylin's Life of Laud, 374; Collier, 789. One of his offences was the asserting the pope to be Antichrist, which displeased the king as well as primate, though it had been orthodox under James.

h Collier, 764; Neal, 582; Heylin, 288.

i Collier, 753; Heylin, 260.

k Clarendon, iii. 366; State Papers, i. 338. "Lord Scudamore, the English ambassador, set up an altar, &c., in the Laudean style. His successor, lord Leicester, spoke to the archbishop about going to Charenton; and telling him lord Scudamore did never go thither, Laud answered, 'He is the wiser.' Leicester requested his advice what he should do, in order to sift his disposition, being himself resolved how to behave in that matter But the other would only say that he left it to his discretion. Leicester says, he had many reasons to think that for his going to Charenton the archbishop did him all the ill offices he could to the king, representing him as a puritan, and consequently in his method an enemy to monarchical government, though he had not been very kind before. The said archbishop, he adds, would not countenance Blondel's book against the usurped power of the pope." Bloncowe's Sidney Papers, 261.

"To think well of the reformed religion," says Northumberland, in 1640, "is enough to make the archbishop, an enemy; and though he cannot for shame do it in public, yet in private he will do Leicester all the mischief he can." Collins's Sidney Papers, ii. 623.

Such was the opinion entertained of Laud by those who could not reasonably be called puritans, except by such as made that word a synonym for protestant. It would be easy to add other proofs. The prosecution in the star chamber against Sherfield, recorder of Salisbury, for destroying some superstitious pictures in a church, led to a display of the aversion many of the council entertained for popery and their jealousy of the archbishop's bias. They were with difficulty brought to condemn Sherfield, and passed a sentence at last very unlike those to which they were accustomed. Rushworth; State Trials. Hume misrepresents the case.

guage frequently held about the Anglican separation. It became usual for our churchmen to lament the precipitancy with which the Reformation had been conducted, and to inveigh against its principal instruments. The catholic writers had long descanted on the lust and violence of Henry, the pretended licentiousness of Anne Boleyn, the rapacity of Cromwell, the pliancy of Cranmer; sometimes with great truth, but with much of invidious misrepresentation. These topics, which have no kind of operation on men accustomed to sound reasoning, produce an unfailing effect on ordinary minds. Nothing incurred more censure than the dissolution of the monastic orders, or at least the alienation of their endowments; acts accompanied, as we must all admit, with great rapacity and injustice, but which the new school branded with the name of sacrilege. Spelman, an antiquary of eminent learning, was led by bigotry or subserviency to compose a wretched tract called the History of Sacrilege, with a view to confirm the vulgar superstition that the possession of estates alienated from the church entailed a sure curse on the usurper's posterity. There is some reason to suspect that the king entertained a project of restoring all impropriated hereditaments to the church.

It is alleged by one who had much access to Laud, that his object in these accommodations was to draw over the more moderate Romanists to the English church, by extenuating the differences of her faith, and rendering her worship more palatable to their prejudices.[m] There was, however, good reason to suspect, from the same writer's account, that some leading ecclesiastics entertained schemes of a complete re-union;[n] and later discoveries have abundantly confirmed this suspicion. Such schemes have doubtless been in the minds of men not inclined to offer every sacrifice; and during this very period Grotius was exerting his talents (whether judiciously or otherwise we need not inquire) to make some sort of reconciliation and compromise appear practicable.[o]

[m] Heylin's Life of Laud, 390.

[n] Id. 388. The passage is very remarkable, but too long to be extracted in a work not directly ecclesiastical. It is rather ambiguous; but the Memoirs of Panzani afford the key.

[o] [I should now think less favourably of Grotius, and suspect that he would ultimately have made every sacrifice. See Hist. of Literature of 15th, 16th, and 17th centuries, vol. iii. p. 58 (first edition). 1845.]

But we now know that the views of a party in the English church were much more extensive, and went almost to an entire dereliction of the protestant doctrine.

The catholics did not fail to anticipate the most favourable consequences from this turn in the church. The Clarendon State Papers, and many other documents, contain remarkable proofs of their sanguine and not unreasonable hopes. Weston the lord-treasurer, and Cottington, were already in secret of their persuasion; though the former did not take much pains to promote their interests. No one, however, showed them such decided favour as secretary Windebank, through whose hands a correspondence was carried on with the court of Rome by some of its agents.[p] They exult in the peaceful and flourishing state of their religion in England as compared with former times. The recusants, they write, were not molested; and if their compositions were enforced, it was rather from the king's want of money than any desire to injure their religion. Their rites were freely exercised in the queen's chapel and those of ambassadors, and, more privately, in the houses of the rich. The church of England was no longer exasperated against them; if there was ever any prosecution, it was to screen the king from the reproach of the puritans. They drew a flattering picture of the resipiscence of the Anglican party; who are come to acknowledge the truth in some articles, and differ in others rather verbally than in substance, or in points not fundamental; who hold all other protestants to be schismatical, and confess the primacy of the holy see, regretting the separation already made, and wishing for re-union; who profess to pay implicit respect to the fathers, and can best be assailed on that side.[q]

These letters contain, no doubt, a partial representation; that is, they impute to the Anglican clergy in general what was only true of a certain number. Their

[p] The Spanish ambassador applies to Windebank, 1633, to have a case of books restored, that had been carried from the custom-house to archbishop Abbot.—"Now he is dead I make this demand upon his effects and library that they may be restored to me; as his majesty's order at that time was ineffectual, as well as its appearing that there was nothing contraband or prohibited." A list of these books follows, and is curious. They consisted of English popish tracts by wholesale, intended, of course, for circulation. Clar. State Papers, 66.

[q] Clarendon State Papers, 197, &c.

aim was to inspire the court of Rome with more favourable views of that of England, and thus to pave the way for a permission of the oath of allegiance, at least with some modification of its terms. Such flattering tales naturally excited the hopes of the Vatican, and contributed to the mission of Panzani, who was instructed to feel the pulse of the nation, and communicate more unbiassed information to his court than could be expected from the English priests. He confirmed, by his letters, the general truth of the former statements, as to the tendency of the Anglican church, and the favourable dispositions of the court. The king received him secretly, but with much courtesy; the queen and the catholic ministers, Cottington and Windebank, with unreserved confidence. It required all the adroitness of an Italian emissary from the subtlest of courts to meet their demonstrations of friendship without too much committing his employers. Nor did Panzani altogether satisfy the pope, or at least his minister, cardinal Barberini, in this respect.[r]

[r] Id. 249. The Memoirs of Panzani, after furnishing some materials to Dodd's Church History, were published by Mr. Berington, in 1794. They are, however, become scarce, and have not been much quoted. It is plain that they were not his own work, but written by some dependent or person in his confidence. Their truth, as well as authenticity, appears to me quite beyond controversy; they coincide, in a remarkable manner, with all our other information; the names and local details are particularly accurate for the work of a foreigner; in short, they contain no one fact of any consequence which there is reason to distrust. Some account of them may be found in Butler's Engl. Cath. vol. iv.

A small tract, entitled "The Pope's Nuncio," printed in 1643, and said to be founded on the information of the Venetian ambassador, is, as I conceive, derived in some direct or indirect manner from these Memoirs. It is republished in the Somers' Tracts, vol. iv.

Mr. Butler has published, for the first time, a long and important extract from Panzani's own report to the pope concerning the state of the catholic religion in England. Mem. of Catholics, iv. 55. He reckons them at 150,000; many of them, however, continuing so outwardly to live as not to be known for such, among whom are many of the first nobility. From them the neighbouring catholics have no means of hearing mass or going to the sacraments. Others, more bold, give opportunity, more or less, to their poorer neighbours to practise their duty. Besides these there are others, who, apprehensive of losing their property or places, live in appearance as protestants, take the oaths of supremacy and allegiance, frequent the churches, and speak occasionally against catholics; yet in their hearts are such, and sometimes keep priests in their houses, that they may not be without help if necessary. Among them he includes some of the first nobility, secular and ecclesiastical, and many of every rank. While he was in London, almost all the nobility who died, though reputed protestants, died catholics. The bishops are protestants, except four, Durham, Salisbury, Rochester, and Oxford, who are puritans. The latter are most numerous among the people, and are more hated by moderate protestants than are the catholics. A

During the residence of Panzani in England, an extraordinary negotiation was commenced for the reconciliation of the church of England with that of Rome; and, as this fact, though unquestionable, is very little known, I may not be thought to digress in taking particular notice of it. Windebank and lord Cottington were the first movers in that business; both calling themselves to Panzani catholics, as in fact they were, but claiming all those concessions from the see of Rome which had been sometimes held out in the preceding century. Bishop Montagu soon made himself a party, and had several interviews with Panzani. He professed the strongest desire for a union, and added, that he was satisfied both the archbishops, the bishop of London, and several others of that order, besides many of the inferior clergy, were prepared to acknowledge the spiritual supremacy of the holy see; there being no method of ending controversies but by recurring to some centre of ecclesiastical unity. For himself, he knew no tenet of the Roman church to which he would not subscribe, unless it were that of transubstantiation, though he had some scruples as to communion in one kind. But a congress of moderate and learned men, chosen on each side, might reduce the disputed points into small compass, and confer upon them.

Intrigue of bishop Montagu with Panzani.

This overture being communicated to Rome by its agent, was, of course, too tempting to be disregarded,

great change is apparent in books and sermons compared with former times; auricular confession praised, images well spoken of, and altars. The pope is owned as patriarch of the West; and wishes are expressed for re-union. The queen has a public chapel besides her private one, where service is celebrated with much pomp: also the ambassadors; and there are others in London. The laws against recusants are much relaxed; though sometimes the king, being in want of money, takes one-third of their incomes by way of composition. The catholics are yet molested by the pursuivants, who enter their houses in search of priests or sacred vessels; and though this evil was not much felt while he was in London, they might be set at work at any time. He determined therefore to obtain, if possible, a general order from the king to restrain the pursuivants; and the business was put into the hands of some councillors, but not settled at his departure. The oath of allegiance divided the ecclesiastics, the major part refusing to take it. After a good deal about the appointment of a catholic bishop in England, he mentions father Davenport or Sancta Clara's book, entitled Deus, Natura, Gratia, with which the king, he says, had been pleased, and was therefore disappointed at finding it put in the Index Expurgatorius at Rome. — This book, which made much noise at the time, was an attempt to show the compatibility of the Anglican doctrines with those of the catholic church; the usual trick of popish intriguers. See an abstract of it in Stillingfleet's Works, vol. v p 176.

though too ambiguous to be snatched at. The re-union of England to the catholic church, in itself a most important advantage, might, at that particular juncture, during the dubious struggle of the protestant religion in Germany, and its still more precarious condition in France, very probably reduce its adherents throughout Europe to a proscribed and persecuted sect. Panzani was, therefore, instructed to flatter Montagu's vanity, to manifest a great desire for reconciliation, but not to favour any discussion of controverted points, which had always proved fruitless, and which could not be admitted till the supreme authority of the holy see was recognised. As to all usages founded on positive law, which might be disagreeable to the English nation, they should receive as much mitigation as the case would bear. This, of course, alluded to the three great points of discipline, or ecclesiastical institution—the celibacy of the clergy, the exclusion of the laity from the eucharistical cup, and the Latin liturgy.

In the course of the bishop's subsequent interviews, he again mentioned his willingness to acknowledge the pope's supremacy; and assured Panzani that the archbishop was entirely of his mind, but with a great mixture of fear and caution.* Three bishops only, Morton, Hall, and Davenant, were obstinately bent against the church of Rome; the rest might be counted moderate.† The agent, however, took care to obtain from another quarter a more particular account of each bishop's disposition, and transmitted to Rome a report, which does not appear. Montagu displayed a most unguarded warmth in all this treaty; notwithstanding which, Panzani suspected him of still entertaining some notions

* If we may believe Heylin, the queen prevailed on Laud to use his influence with the king that Panzani might come to London, promising to be his friend. Life of Laud, 286.

† P. 246. It may seem extraordinary that he did not mention Williams; but I presume he took that political bishop's zeal to be insincere. Williams had been, while in power, a great favourer of the toleration of papists. If, indeed, a story told of him, on Endymion Porter's authority, in a late work, be true, he was at that time sufficiently inclined to have accepted a cardinal's hat, and made interest for it. Blencowe's Sidney Papers, p. 262. One bishop, Goodman of Gloucester, was undoubtedly a Roman catholic, and died in that communion. He refused, for a long time, to subscribe the canons of 1640, on account of one that contained a renunciation of popery; but yielded at length for fear of suspension, and charged Montagu with having instigated his refusal, though he subscribed himself. Nalson, i. 371; Rushw. Abr. iii. 168; Collier, 793; Laud's defence on his trial.

incompatible with the catholic doctrine. He behaved with much greater discretion than the bishop; justly, I suppose, distrusting the influence of a man who showed so little capacity for a business of the utmost delicacy. It appears almost certain that Montagu made too free with the name of the archbishop, and probably of many others; and it is well worthy of remark, that the popish party did not entertain any sanguine hopes of the king's conversion. They expected doubtless that, by gaining over the hierarchy, they should induce him to follow; but he had evidently given no reason to imagine that he would precede. A few casual words, not perhaps exactly reported, might sometimes elate their hopes, but cannot excite in us, who are better able to judge than his contemporaries, any reasonable suspicion of his constancy. Yet it is not impossible that he might at one time conceive a union to be more practicable than it really was.[u]

The court of Rome, however, omitted no token of civility or good-will to conciliate our king's favour. Besides expressions of paternal kindness which Urban lavished on him, cardinal Barberini gratified his well-known taste by a present of pictures. Charles showed a due sense of these courtesies. The prosecutions of

[u] Henrietta Maria, in her communication to Madame de Motteville, has the following passage, which is not undeserving of notice, though she may have been deceived:—"Le Roi Jacques . . . composa deux livres pour la défense de la fausse religion d'Angleterre, et fit réponse à ceux que le cardinal du Perron écrivit contre lui. En défendant le mensonge, il conçut de l'amour pour la vérité, et souhaita de se retirer de l'erreur. Ce fut en voulant accorder les deux religions, la nôtre et la sienne; mais il mourut avant que d'exécuter ce louable dessein. Le Roi Charles Stuard, son fils, quand il vint à la couronne, se trouva presque dans les mêmes sentimens. Il avoit auprès de lui l'archevêque de Cantorberi, qui, dans son cœur étant très-bon catholique, inspira au roi son maître un grand désir de rétablir la liturgie, croyant que s'il pouvoit arriver à ce point, il y auroit si peu de différence de la foi orthodoxe à la leur, qu'il seroit aisé peu à peu d'y conduire le roi. Pour travailler à ce grand ouvrage, que ne paroissoit au roi d'Angleterre que le rétablissement parfait de la liturgie, et qui est le seul dessein qui ait été dans le cœur de ce prince, l'archevêque de Cantorberi lui conseilla de commencer par l'Ecosse, comme plus éloignée du cœur du royaume; lui disant, que leur remuement seroit moins à craindre. Le roi, avant que de partir, voulant envoyer cette liturgie en l'Ecosse, l'apporta un soir dans la chambre de la reine, et la pria de lire ce livre, lui disant, qu'il seroit bien aise qu'elle le vit, afin qu'elle sût combien ils approchoient de créance." Mém. de Motteville, i. 242. A well-informed writer, however, says Charles was a protestant and never liked the catholic religion. P. Orleans, Révolut. d'Anglet. iii. 35. He says the same of Laud, but refers to Vittorio Siri for an opposite story.

recusants were absolutely stopped, by cashiering the pursuivants who had been employed in the odious office of detecting them. It was arranged that reciprocal diplomatic relations should be established, and consequently that an English agent should constantly reside at the court of Rome, by the nominal appointment of the queen, but empowered to conduct the various negotiations in hand. Through the first person who held this station, a gentleman of the name of Hamilton, the king made an overture on a matter very near to his heart, the restitution of the Palatinate. I have no doubt that the whole of his imprudent tampering with Rome had been considerably influenced by this chimerical hope. But it was apparent to every man of less unsound judgment than Charles, that except the young elector would renounce the protestant faith, he could expect nothing from the intercession of the pope.

After the first preliminaries, which she could not refuse to enter upon, the court of Rome displayed no eagerness for a treaty which it found, on more exact information, to be embarrassed with greater difficulties than its new allies had confessed.[x] Whether this subject continued to be discussed during the mission of Con, who succeeded Panzani, is hard to determine; because the latter's memoirs, our unquestionable authority for what has been above related, cease to afford us light. But as Con was a very active intriguer for his court, it is by no means unlikely that he proceeded in the same kind of parley with Montagu and Windebank. Yet whatever might pass between them was intended rather with a view to the general interests of the Roman church, than to promote a reconciliation with that of England, as a separate contracting party. The former has displayed so systematic a policy to make no concession to the reformers, either in matters of belief, wherein, since the council of Trent, she could in fact do nothing, or even, as far as possible, in points of discipline, as to

[x] Cardinal Barberini wrote word to Panzani, that the proposal of Windebank that the church of Rome should sacrifice communion in one kind, the celibacy of the clergy, &c., would never please; that the English ought to look back on the breach they had made, and their motives for it, and that the whole world was against them on the first mentioned points: p. 173. This is exactly what any one might predict who knew the long discussions on the subject with Austria and France at the time of the council of Trent.

which she judged, perhaps rightly, that her authority would be impaired by the precedent of concession without any proportionate advantage; so unvarying in all cases has been her determination to yield nothing except through absolute force, and to elude force itself by every subtlety; that it is astonishing how honest men on the opposite side (men, that is, who seriously intended to preserve any portion of their avowed tenets), could ever contemplate the possibility of reconciliation. Upon the present occasion, she manifested some alarm at the boasted approximation of the Anglicans. The attraction of bodies is reciprocal; and the English catholics might, with so much temporal interest in the scale, be impelled more rapidly towards the established church than that church towards them. "Advise the clergy," say the instructions to the nuncio in 1639, "to desist from that foolish, nay rather illiterate and childish, custom of distinction in the protestant and puritan doctrine; and especially this error is so much the greater, when they undertake to prove that protestantism is a degree nearer to the catholic faith than the other. For since both of them be without the verge of the church, it is needless hypocrisy to speak of it, yea, it begets more malice than it is worth."[y]

This exceeding boldness of the catholic party, and their success in conversions, which were, in fact, less remarkable for their number than for the condition of the persons, roused the primate himself to some apprehension. He preferred a formal complaint to the king in council against the resort of papists to the queen's chapel, and the insolence of some active zealots about the court.[z] Henrietta, who had courted his friendship,

[y] "Begets more malice" is obscure—perhaps it means "irritates the puritans more." Clar. Papers, ii. 44.

[z] Heylin, p. 338; Laud's Diary, Oct. 1637; Strafford Letters, i. 426. Garrard, a dependent friend whom Strafford retained, as was usual with great men, to communicate the news of the court, frequently descants on the excessive boldness of the papists. "Laud," he says, vol. ii. p. 74, "does all he can to beat down the general fear conceived of bringing on popery." So in p. 165 and many other places.

It is manifest, by a letter of Laud to Strafford in 1638, that he was not satisfied with the systematic connivance at recusancy. Id. 171. The explanation of the archbishop's conduct with respect to the Roman Catholics seems to be, that, with a view of gaining them over to his own half-way protestantism, and also of ingratiating himself with the queen, he had for a time gone along with the tide, till he found there was a real danger of being carried farther than he intended. This accounts for the well-known story told by Evelyn, that the Jesuits at Rome

and probably relied on his connivance, if not support, seems never to have forgiven this unexpected attack. Laud gave another testimony of his unabated hostility to popery by republishing with additions his celebrated conference with the jesuit Fisher, a work reckoned the great monument of his learning and controversial acumen. This conference had taken place many years before, at the desire and in the presence of the countess of Buckingham, the duke's mother. Those who are conversant with literary and ecclesiastical anecdote must be aware, that nothing was more usual in the seventeenth century than such single combats under the eye of some fair lady, whose religious faith was to depend upon the victory. The wily and polished jesuits had great advantages in these duels, which almost always, I believe, ended in their favour. After fatiguing their gentle arbitress for a time with the tedious fencing of text and citation, till she felt her own inability to award the palm, they came, with her prejudices already engaged, to the necessity of an infallible judge; and as their adversaries of the English church had generally left themselves vulnerable on this side, there was little difficulty in obtaining success. Like Hector in the spoils of Patroclus, our clergy had assumed to themselves the celestial armour of authority; but found that, however it might intimidate the multitude, it fitted them too ill to repel the spear that had been wrought in the same furnace. A writer of this school in the age of Charles I., and incomparably superior to any of the churchmen belonging to it, in the brightness and originality of his genius, sir Thomas Browne, whose varied talents wanted nothing but the controlling supremacy of good sense to place him in the highest rank of our literature, will furnish a better instance of the prevailing bias than merely theological writings. He united a most acute and sceptical understanding with strong devotional sensibility, the temperament so conspicuous in Pascal and Johnson, and which has a peculiar tendency to seek the repose of implicit

spoke of him as their bitterest enemy. He is reported to have said that they and the puritans were the chief obstacles to a re-union of the churches. There is an obscure story of a plot carried on by the pope's legate Con and the English jesuits against Laud, and detected in 1640 by one Andrew Habernfield, which some have treated as a mere fiction. Rushworth, iii. 232.

faith. "Where the Scripture is silent," says Browne in his Religio Medici, "the church is my text; where it speaks, 'tis but my comment." That jesuit must have been a disgrace to his order, who would have asked more than a such a concession to secure a proselyte—the right of interpreting whatever was written, and of supplying whatever was not.

At this time, however, appeared one man in the field of religious debate, who struck out from that insidious track, of which his own experience had shown him the perils. Chillingworth, on whom nature had bestowed something like the same constitutional temperament as that to which I have just adverted, except that, the reasoning power having a greater mastery, his religious sensibility rather gave earnestness to his love of truth than tenacity to his prejudices, had been induced, like so many others, to pass over to the Roman church. The act of transition, it may be observed, from a system of tenets wherein men had been educated, was in itself a vigorous exercise of free speculation, and might be termed the suicide of private judgment. But in Chillingworth's restless mind there was an inextinguishable scepticism that no opiates could subdue; yet a scepticism of that species which belongs to a vigorous, not that which denotes a feeble, understanding. Dissatisfied with his new opinions, of which he had never been really convinced, he panted to breathe the freer air of protestantism, and, after a long and anxious investigation, returned to the English church. He well redeemed any censure that might have been thrown on him, by his great work in answer to the jesuit Knott, entitled The Religion of Protestants a Safe Way to Salvation. In the course of his reflections he had perceived the insecurity of resting the Reformation on any but its original basis, the independency of private opinion. This, too, he asserted with a fearlessness and consistency hitherto little known, even within the protestant pale; combining it with another principle, which the zeal of the early reformers had rendered them unable to perceive, and for want of which the adversary had perpetually discomfited them, namely, that the errors of conscientious men do not forfeit the favour of God. This endeavour to mitigate the dread of forming mistaken

Chillingworth.

judgments in religion runs through the whole work of Chillingworth, and marks him as the founder, in this country, of what has been called the latitudinarian school of theology. In this view, which has practically been the most important one of the controversy, it may pass for an anticipated reply to the most brilliant performance on the opposite side, the History of the Variations of Protestant Churches; and those who from a delight in the display of human intellect, or from more serious motives of inquiry, are led to these two masterpieces, will have seen, perhaps, the utmost strength that either party, in the great schism of Christendom, has been able to put forth.

This celebrated work, which gained its author the epithet of immortal, is now, I suspect, little studied even by the clergy. It is, no doubt, somewhat tedious, when read continuously, from the frequent recurrence of the same strain of reasoning, and from his method of following, sentence by sentence, the steps of his opponent; a method which, while it presents an immediate advantage to controversial writers, as it heightens their reputation at the expense of their adversary, is apt to render them very tiresome to posterity. But the closeness and precision of his logic, which this mode of incessant grappling with his antagonist served to display, are so admirable, perhaps, indeed, hardly rivalled in any book beyond the limits of strict science, that the study of Chillingworth might tend to chastise the verbose and indefinite declamation so characteristic of the present day. His style, though by no means elegant or imaginative, has much of a nervous energy that rises into eloquence. He is chiefly, however, valuable for a true liberality and tolerance; far removed from indifference, as may well be thought of one whose life was consumed in searching for truth, but diametrically adverse to those pretensions which seem of late years to have been re gaining ground among the Anglican divines.

Hales.

The latitudinarian principles of Chillingworth appear to have been confirmed by his intercourse with a man, of whose capacity his contemporaries entertained so high an admiration, that he acquired the distinctive appellation of the Ever-memorable John Hales. This testimony of so many enlightened men is

not to be disregarded, even if we should be of opinion that the writings of Hales, though abounding with marks of an unshackled mind, do not quite come up to the promise of his name. He had, as well as Chillingworth, borrowed from Leyden, perhaps a little from Racow, a tone of thinking upon some doctrinal points, as yet nearly unknown, and therefore highly obnoxious, in England. More hardy than his friend, he wrote a short treatise on schism, which tended, in pretty blunt and unlimited language, to overthrow the scheme of authoritative decisions in any church, pointing at the imposition of unnecessary ceremonies and articles of faith as at once the cause and the apology of separation. This, having been circulated in manuscript, came to the knowledge of Laud, who sent for Hales to Lambeth, and questioned him as to his opinions on that matter. Hales, though willing to promise that he would not publish the tract, receded not a jot from his free notions of ecclesiastical power; which he again advisedly maintained in a letter to the archbishop, now printed among his works. The result was equally honourable to both parties; Laud bestowing a canonry of Windsor on Hales, which, after so bold an avowal of his opinion, he might accept without the slightest reproach. A behaviour so liberal forms a singular contrast to the rest of this prelate's history. It is a proof, no doubt, that he knew how to set such a value on great abilities and learning, as to forgive much that wounded his pride. But besides that Hales had not made public this treatise on schism, for which I think he could not have escaped the high-commission court, he was known by Laud to stand far aloof from the Calvinistic sectaries, having long since embraced in their full extent the principles of Episcopius, and to mix no alloy of political faction with the philosophical hardiness of his speculations.[a]

These two remarkable ornaments of the English church, who dwelt apart like stars, to use the fine ex-

[a] Heylin, in his Life of Laud, p. 340, tells this story as if Hales had recanted his opinions and owned Laud's superiority over him in argument. This is ludicrous, considering the relative abilities of the two men. And Hales's letter to the archbishop, which is full as bold as his treatise on schism, proves that Heylin's narrative is one of his many wilful falsehoods; for, by making himself a witness to the pretended circumstances, he has precluded the excuse of error.

pression of a living poet, from the vulgar bigots of both her factions, were accustomed to meet, in the society of some other eminent persons, at the house of lord Falkland, near Burford. One of those, who, then in a ripe and learned youth, became afterwards so conspicuous a name in our annals and our literature, Mr. Hyde, the chosen bosom-friend of his host, has dwelt with affectionate remembrance on the conversations of that mansion. His marvellous talent of delineating character—a talent, I think, unrivalled by any writer (since, combining the bold outline of the ancient historians with the analytical minuteness of De Retz and St. Simon, it produces a higher effect than either)—is never more beautifully displayed than in that part of the memoirs of his life where Falkland, Hales, Chillingworth, and the rest of his early friends, pass over the scene.

Character of Clarendon's writings.

For almost thirty ensuing years Hyde himself becomes the companion of our historical reading. Seven folio volumes contain his History of the Rebellion, his Life, and the Letters, of which a large portion are his own. We contract an intimacy with an author who has poured out to us so much of his heart. Though lord Clarendon's chief work seems to me not quite accurately styled a history, belonging rather to the class of memoirs,[b] yet the very

[b] It appears by the late edition at Oxford (1826) that lord Clarendon twice altered his intention as to the nature of his work, having originally designed to write the history of his time, which he changed to memorials of his own life, and again returned to his first plan. The consequence has been that there are two manuscripts of the History and of the Life, which, in a great degree, are transcripts one from the other, or contain the same general fact with variations. That part of the Life, previous to 1660, which is not inserted in the History of the Rebellion, is by no means extensive.

The genuine text of the History has only been published in 1826. A story, as is well known, obtained circulation within thirty years after its first appearance, that the manuscript had been materially altered or interpolated. This was positively denied, and supposed to be wholly disproved. It turns out however that, like many other anecdotes, it had a considerable basis of truth, though with various erroneous additions, and probably wilful misrepresentations. It is nevertheless surprising that the worthy editor of the original manuscript should say, "that the genuineness of the work has rashly, and for party purposes, been called in question," when no one, I believe, has ever disputed its genuineness; and the anecdote to which I have alluded, and to which, no doubt, he alludes, has been by his own industry (and many thanks we owe him for it) perfectly confirmed in substance. For though he endeavours, not quite necessarily, to excuse or justify the original editors (who seem to have been Sprat and Aldrich, with the sanction probably of lords Clarendon and Rochester, the historian's sons) for what they did, and even singularly asserts that "the present collation satisfactorily proves that they have in no one instance

reasons of this distinction, the long circumstantial narrative of events wherein he was engaged, and the slight notice of those which he only learned from others, render it more interesting, if not more authentic. Conformably to human feelings, though against the rules of historical composition, it bears the continual impress of an intense concern about what he relates. This depth of personal interest united frequently with an eloquence of the heart and imagination that struggles through an involved, incorrect, and artificial diction, makes it, one would imagine, hardly possible for those most alien from his sentiments to read his writings without some portion of sympathy. But they are on this account not a little dangerous to the soundness of our historical conclusions; the prejudices of Clarendon, and his negligence as to truth, being full as striking as his excellencies, and leading him not only into many erroneous judgments, but into frequent inconsistencies.

These inconsistencies are nowhere so apparent as in the first or introductory book of his History, which professes to give a general view of the state of affairs before the meeting of the long parliament. It is certainly the most defective part of his work. A strange mixture of honesty and disingenuousness pervades all he has written of the early years of the king's reign; retracting, at least in spirit, in almost every page what has been said in the last, from a constant fear that he may have admitted so much against the government as to make his readers impute too little blame to those who opposed it. Thus, after freely censuring the exactions of the crown, whether

Animadversions on Clarendon's account of this period.

added, suppressed, or altered any historical fact" (Adver. to edit. 1826, p. v.), yet it is certain that, besides the perpetual impertinence of mending the style, there are several hundred variations which affect the sense, introduced from one motive or another, and directly contrary to the laws of literary integrity. The long passages inserted in the appendixes to several volumes of this edition contain surely historical facts that had been suppressed. And, even with respect to subordinate alterations, made for the purpose of softening traits of the author's angry temper, or correcting his mistakes, the general effect of taking such liberties with a work is to give it an undue credit in the eyes of the public, and to induce men to believe matters upon the writer's testimony, which they would not have done so readily if his errors had been fairly laid before them. Clarendon indeed is so strangely loose in expression as well as incorrect in statement, that it would have been impossible to remove his faults of this kind without writing again half the History; but it is certain that great trouble was very unduly taken to lighten their impression upon the world.

on the score of obsolete prerogative or without any just pretext at all, especially that of ship-money, and confessing that "those foundations of right, by which men valued their security, were never, to the apprehension and understanding of wise men, in more danger of being destroyed," he turns to dwell on the prosperous state of the kingdom during this period, "enjoying the greatest calm and the fullest measure of felicity that any people in any age for so long time together have been blessed with," till he works himself up to a strange paradox, that "many wise men thought it a time wherein those two adjuncts, which Nerva was deified for uniting, Imperium et Libertas, were as well reconciled as is possible."

Such wisdom was not, it seems, the attribute of the nation. "These blessings," he says, "could but enable, not compel, us to be happy; we wanted that sense, acknowledgment, and value of our own happiness which all but we had, and took pains to make, when we could not find, ourselves miserable. There was, in truth, a strange absence of understanding in most, and a strange perverseness of understanding in the rest; the court full of excess, idleness, and luxury; the country full of pride, mutiny, and discontent; every man more troubled and perplexed at that they called the violation of the law than delighted or pleased with the observation of all the rest of the charter; never imputing the increase of their receipts, revenue, and plenty to the wisdom, virtue, and merit of the crown, but objecting every small imposition to the exorbitancy and tyranny of the government."

This strange passage is as inconsistent with other parts of the same chapter, and with Hyde's own conduct at the beginning of the parliament, as it is with all reasonable notions of government.[c] For if kings and ministers may

[c] May thus answers, by a sort of prophetic anticipation, this passage of Clarendon:—"Another sort of men," he says, "and especially lords and gentlemen, by whom the pressures of the government were not much felt, who enjoyed their own plentiful fortunes, with little or insensible detriment, looking no farther than their present safety and prosperity, and the yet undisturbed peace of the nation, whilst other kingdoms were embroiled in calamities, and Germany sadly wasted by a sharp war, did nothing but applaud the happiness of England, and called those ungrateful factious spirits who complained of the breach of laws and liberties; that the kingdom abounded with wealth, plenty, and all kinds of elegancies, more than ever; that it was for the honour of a people that the mo-

plead in excuse for violating one law that they have not transgressed the rest (though it would be difficult to name any violation of law that Charles had not committed); if this were enough to reconcile their subjects, and to make dissatisfaction pass for a want or perversion of understanding, they must be in a very different predicament from all others who live within the pale of civil society, whose obligation to obey its discipline is held to be entire and universal. By this great writer's own admissions, the decision in the case of ship-money had shaken every man's security for the enjoyment of his private inheritance. Though as yet not weighty enough to be actually very oppressive, it might, and, according to the experience of Europe, undoubtedly would, become such by length of time and peaceable submission.

We may acknowledge, without hesitation that the kingdom had grown during this period into remarkable prosperity and affluence. The rents of land were very considerably increased, and large tracts reduced into cultivation. The manufacturing towns, the seaports, became more populous and flourishing. The metropolis increased in size with a rapidity that repeated proclamations against new buildings could not restrain. The country houses of the superior gentry throughout Eng-

narch should live splendidly, and not be curbed at all in his prerogative, which would bring him into greater esteem with other princes, and more enable him to prevail in treaties; that what they suffered by monopolies was insensible, and not grievous, if compared with other states; that the duke of Tuscany sat heavier upon his people in that very kind; that the French king had made himself an absolute lord, and quite depressed the power of parliaments, which had been there as great as in any kingdom, and yet that France flourished, and the gentry lived well; that the Austrian princes, especially in Spain, laid heavy burdens upon their subjects. Thus did many of the English gentry, by way of comparison, in ordinary discourse, plead for their own servitude.

"The courtiers would begin to dispute against parliaments, in their ordinary discourse, that they were cruel to those whom the king favoured, and too injurious to his prerogative; that the late parliament stood upon too high terms with the king, and that they hoped the king should never need any more parliaments. Some of the greatest statesmen and privy-counsellors would ordinarily laugh at the ancient language of England when the word liberty of the subject was named. But these gentlemen, who seemed so forward in taking up their own yoke, were but a small part of the nation (though a number considerable enough to make a reformation hard) compared with those gentlemen who were sensible of their birthrights and the true interests of the kingdom; on which side the common people in the generality and the country freeholders stood, who would rationally argue of their own rights, and those oppressions that were laid upon them." Hist. of Parliament, p. 12 (edit. 1812).

land were built on a scale which their descendants, even in days of more redundant affluence, have seldom ventured to emulate. The kingdom was indebted for this prosperity to the spirit and industry of the people, to the laws which secure the commons from oppression, and which, as between man and man, were still fairly administered; to the opening of fresh channels of trade in the eastern and western worlds (rivulets, indeed, as they seem to us who float in the full tide of modern commerce, yet at that time no slight contributions to the stream of public wealth); but, above all, to the long tranquillity of the kingdom, ignorant of the sufferings of domestic, and seldom much affected by the privations of foreign, war. It was the natural course of things that wealth should be progressive in such a land. Extreme tyranny, such as that of Spain in the Netherlands, might, no doubt, have turned back the current. A less violent but long-continued despotism, such as has existed in several European monarchies, would, by the corruption and incapacity which absolute governments engender, have retarded its advance. The administration of Charles was certainly not of the former description. Yet it would have been an excess of loyal stupidity in the nation to have attributed their riches to the wisdom or virtue of the court, which had injured the freedom of trade by monopolies and arbitrary proclamations, and driven away industrious manufacturers by persecution.

If we were to draw our knowledge from no other book than lord Clarendon's History it would still be impossible to avoid the inference that misconduct on the part of the crown, and more especially of the church, was the chief, if not the sole, cause of these prevailing discontents. At the time when Laud unhappily became archbishop of Canterbury, "the general temper and humour of the kingdom," he tells us, "was little inclined to the papist, and less to the puritan. There were some late taxes and impositions introduced, which rather angered than grieved the people, who were more than repaid by the quiet peace and prosperity they enjoyed; and the murmur and discontent that was, appeared to be against the excess of power exercised by the crown, and supported by the judges in Westminster Hall. The church was not repined at, nor the least inclination to alter the

government and discipline thereof, or to change the doctrine. Nor was there at that time any considerable number of persons of any valuable condition throughout the kingdom who did wish either; and the cause of so prodigious a change in so few years after was too visible from the effects." This cause, he is compelled to admit, in a passage too diffuse to be extracted, was the passionate and imprudent behaviour of the primate. Can there be a stronger proof of the personal prepossessions which for ever distort the judgment of this author than that he should blame the remissness of Abbot, who left things in so happy a condition, and assert that Laud executed the trust of solely managing ecclesiastical affairs "infinitely to the service and benefit" of that church which he brought to destruction? Were it altogether true, what is doubtless much exaggerated, that in 1633 very little discontent at the measures of the court had begun to prevail, it would be utterly inconsistent with experience and observation of mankind to ascribe the almost universal murmurs of 1639 to any other cause than bad government. But Hyde, attached to Laud and devoted to the king, shrunk from the conclusion that his own language would afford; and his piety made him seek in some mysterious influences of Heaven, and in a judicial infatuation of the people, for the causes of those troubles which the fixed and uniform dispensations of Providence were sufficient to explain.[d]

[d] It is curious to contrast the inconsistent and feeble apologies for the prerogative we read in Clarendon's History with his speech before the lords, on impeaching the judges for their decision in the case of ship-money. In this he speaks very strongly as to the illegality of the proceedings of the judges in Rolls and Vassal's cases, though in his History he endeavours to insinuate that the king had a right to tonnage and poundage; he inveighs also against the decision in Bate's case, which he vindicates in his History. Somers Tracts, iv. 302. Indeed the whole speech is irreconcilable with the picture he afterwards drew of the prosperity of England, and of the unreasonableness of discontent.

The fact is, that when he sat down in Jersey to begin his History, irritated, disappointed, afflicted at all that had passed in the last five years, he could not bring his mind back to the state in which it had been at the meeting of the long parliament; and believed himself to have partaken far less in the sense of abuses and desire of redress than he had really done. There may, however, be reason to suspect that he had, in some respects, gone farther in the first draught of his History than appears at present; that is, I conceive, that he erased himself some passages or phrases unfavourable to the court. Let the reader judge from the following sentence in a letter to Nicholas relating to his work, dated Feb. 12, 1647: —"I will offer no excuse for the entertaining of Con, who came after Panzani, and was succeeded by Rosetti; which was a business of so much folly, or worse

Scots troubles, and distress of the government.

It is difficult to pronounce how much longer the nation's signal forbearance would have held out, if the Scots had not precipitated themselves into rebellion. There was still a confident hope that parliament must soon or late be assembled, and it seemed equally impolitic and unconstitutional to seek redress by any violent means. The patriots, too, had just cause to lament the ambition of some whom the court's favour subdued, and the levity of many more whom its vanities allured. But the unexpected success of the tumultuous rising at Edinburgh against the service-book revealed the impotence of the English government. Destitute of money, and neither daring to ask it from a parliament, nor to extort it by any fresh demand from the people, they hesitated whether to employ force or to submit to the insurgents. In the exchequer, as lord Northumberland wrote to Strafford, there was but the sum of 200*l.*; with all the means that could be devised, not above 110,000*l.* could be raised; the magazines were all unfurnished, and the people were so discontented by reason of the multitude of projects daily imposed upon them, that he saw reason to fear a great part of them would be readier to join with the Scots than to draw their swords in the king's service.[e] "The discontents at home," he observes some months afterwards, "do rather increase than lessen, there being no course taken to give any kind of satisfaction. The king's coffers were never emptier than at this time; and to us that have the honour to be near about him no way is yet known how he will find means either to maintain or begin a war without the help of his people."[f] Strafford himself dissuaded a war in such circumstances, though hardly knowing what other course to advise.[g] He had now awaked from the dreams of infatuated arro-

that I have mentioned it in my prolegomena (of those distempers and exorbitances in government which prepared the people to submit to the fury of this parliament), as an offence and scandal to religion, in the same degree that ship-money was to liberty and property." State Papers, ii. 336. But when we turn to the passage in the History of the Rebellion, p. 268, where this is mentioned, we do not find a single expression reflecting on the court, though the catholics themselves are censured for imprudence. This may serve to account for several of Clarendon's inconsistencies, for nothing renders an author so inconsistent with himself as corrections made in a different temper of mind from that which actuated him in the first composition.

[e] Strafford Letters, ii. 186.

[f] Id. 267.

[g] Id. 191.

gance to stand appalled at the perils of his sovereign and his own. In the letters that passed between him and Laud after the Scots troubles had broken out we read their hardly-concealed dismay, and glimpses of "the two-handed engine at the door." Yet pride forbade them to perceive or confess the real causes of this portentous state of affairs. They fondly laid the miscarriage of the business of Scotland on failure in the execution, and an "over-great desire to do all quietly."[h]

In this imminent necessity the king had recourse to those who had least cause to repine at his administration. The catholic gentry, at the powerful interference of their queen, made large contributions towards the campaign of 1639. Many of them volunteered their personal service. There was, indeed, a further project, so secret that it is not mentioned, I believe, till very lately, by any historical writer. This was to procure 10,000 regular troops from Flanders, in exchange for so many recruits to be levied for Spain in England and Ireland. These troops were to be for six months in the king's pay. Colonel Gage, a catholic and the negotiator of this treaty, hints that the pope would probably contribute money, if he had hopes of seeing the penal laws repealed; and observes that with such an army the king might both subdue the Scots, and at the same time keep his parliament in check, so as to make them come to his conditions.[i] The treaty, however, was never concluded. Spain was far more inclined to revenge herself for the bad faith she imputed to Charles than to lend him any assistance. Hence, when, in the next year, he offered to declare war against Holland, as soon as he should have subdued the Scots, for a loan of 1,200,000 crowns, the Spanish ambassador haughtily rejected the proposition.[k]

[h] Strafford Letters, ii. 250. "It was ever clear in my judgment," says Strafford, "that the business of Scotland, so well laid, so pleasing to God and man, had it been effected, was miserably lost in the execution; yet could never have so fatally miscarried if there had not been a failure likewise in this direction, occasioned either by over-great desires to do all quietly without noise, by the state of the business misrepresented, by opportunities and seasons slipped, or by some such like." Laud answers in the same strain:—"Indeed, my lord, the business of Scotland, I can be bold to say without vanity, was well laid, and was a great service to the crown as well as to God himself. And that it should so fatally fail in the execution is a great blow as well to the power as honour of the king," &c. He lays the blame in a great degree on lord Traquair. P. 264.

[i] Clarendon State Papers, ii. 19.

[k] Id. 84, and Appendix, xxvi.

The pacification, as it was termed, of Berwick, in the summer of 1639, has been represented by several historians as a measure equally ruinous and unaccountable. That it was so far ruinous as it formed one link in the chain that dragged the king to destruction, is most evident; but it was both inevitable and easy of explanation. The treasury, whatever Clarendon and Hume may have said, was perfectly bankrupt.[m] The citizens of London, on being urged by the council for a loan, had used as much evasion as they dared.[n] The writs for ship-money were executed with greater difficulty, several sheriffs willingly acquiescing in the excuses made by their counties.[o] Sir Francis Seymour, brother to the earl of Hertford, and a man, like his brother, of very moderate principles, absolutely refused to pay it, though warned by the council to beware how he disputed its legality.[p] Many of the Yorkshire gentry, headed by sir Marmaduke Langdale, combined to refuse its payment.[q] It was impossible to rely again on catholic subscriptions, which the court of Rome, as I have mentioned above, instigated perhaps by that of Madrid, had already tried to restrain. The Scots were enthusiastic, nearly unanimous, and entire masters of their country. The English nobility in general detested the archbishop, to whose passion they ascribed the whole mischief, and feared to see

[m] Hume says that Charles had an accumulated treasure of 200,000*l.* at this time. I know not his authority for the particular sum; but Clarendon pretends that "the revenue had been so well improved, and so wisely managed, that there was money in the exchequer proportionable for the undertaking any noble enterprise." This is, at the best, strangely hyperbolical; but, in fact, there was an absolute want of everything. Ship-money would have been a still more crying sin than it was, if the produce had gone beyond the demands of the state: nor was this ever imputed to the court. This is one of lord Clarendon's capital mistakes; for it leads him to speak of the treaty of Berwick as a measure that might have been avoided, and even, in one place, to ascribe it to the king's excessive lenity and aversion to shedding blood; wherein a herd of superficial writers have followed him.

[n] Clarendon State Papers, ii. 46, 54. Lest it should seem extraordinary that I sometimes contradict lord Clarendon on the authority of his own collection of papers, it may be necessary to apprise the reader that none of these, anterior to the civil war, had come in his possession till he had written this part of his History.

[o] The grand jury of Northampton presented ship-money as a grievance. But the privy-council wrote to the sheriff that they would not admit his affected excuses; and if he neglected to execute the writ, a quick and exemplary reparation would be required of him. Rushw. Abr. iii. 93.

[p] Rushw. Abr. iii. 47. The king writes in the margin of Windebank's letter, informing him of Seymour's refusal,—"You must needs make him an example, not only by distress, but, if it be possible, an information in some court, as Mr. Attorney shall advise."

[q] Strafford Letters, ii. 308

the king become despotic in Scotland. If the terms of Charles's treaty with his revolted subjects were unsatisfactory and indefinite, enormous in concession, and yet affording a pretext for new encroachments, this is no more than the common lot of the weaker side.

There was one possible, though not under all the circumstances very likely, method of obtaining the sinews of war—the convocation of parliament. This many, at least, of the king's advisers appear to have long desired, could they but have vanquished his obstinate reluctance. This is an important observation: Charles, and he perhaps alone, unless we reckon the queen, seems to have taken a resolution of superseding absolutely and for ever the legal constitution of England. The judges, the peers, lord Strafford, nay, if we believe his dying speech, the primate himself, retained enough of respect for the ancient laws to desire that parliaments should be summoned whenever they might be expected to second the views of the monarch. They felt that the new scheme of governing by proclamations and writs of ship-money could not and ought not to be permanent in England. The king reasoned more royally, and indeed much better. He well perceived that it was vain to hope for another parliament so constituted as those under the Tudors. He was ashamed (and that pernicious woman at his side would not fail to encourage the sentiment) that his brothers of France and Spain should have achieved a work which the sovereign of England, though called an absolute king by his courtiers, had scarcely begun. All mention, therefore, of calling parliament grated on his ear. The declaration published at the dissolution of the last, that he should account it presumption for any to prescribe a time to him for calling parliaments, was meant to extend even to his own counsellors. He rated severely lord-keeper Coventry for a suggestion of this kind.[r] He came with much reluctance into Wentworth's proposal of summoning one in Ireland, though the superior control of the crown over parliaments in that kingdom was pointed out to him. "The king," says Cottington, "at the end of 1638, will

[r] "The king hath so rattled my lord-keeper, that he is now the most pliable man in England, and all thoughts of parliaments are quite out of his pate." Cottington to Strafford, 29th Oct. 1633, vol. i. p. 141.

not hear of a parliament; and he is told by a committee of learned men that there is no other way."[s] This repugnance to meet his people, and his inability to carry on the war by any other methods, produced the ignominious pacification at Berwick. But as the Scots, grown bolder by success, had, after this treaty, almost thrown off all subjection, and the renewal of the war, or loss of the sovereignty over that kingdom, appeared necessary alternatives, overpowered by the concurrent advice of his council, and especially of Strafford, he issued writs for that parliament which met in April 1640.[t] They told him that, making trial once more of the ancient and ordinary way, he would leave his people without excuse if that should fail; and have wherewithal to justify himself to God and the world, if he should be forced contrary to his inclinations to use extraordinary means, rather than through the peevishness of some factious spirit to suffer his state and government to be lost."[u]

Parliament of April, 1640.

It has been universally admitted that the parliament which met on the 13th of April, 1640, was as favourably disposed towards the king's service, and as little influenced by their many wrongs, as any man of ordinary judgment could expect.[x] But

[s] Vol. ii. p. 246. "So by this time," says a powerful writer, "all thoughts of ever having a parliament again was quite banished; so many oppressions had been set on foot, so many illegal actions done, that the only way to justify the mischiefs already done was to do that one greater; to take away the means which were ordained to redress them, the lawful government of England by parliaments." May, History of Parliament, p. 11.

[t] Sidney Papers, ii. 623. Clarendon Papers, ii. 81.

[u] Id. ibid. The attentive reader will not fail to observe that this is the identical language of the famous advice imputed to Strafford, though used on another occasion.

[x] May. Clarendon. The latter says, upon the dissolution of this parliament, —"It could never be hoped that so many sober and dispassionate men would ever meet again in that place, or fewer who brought ill purposes with them." This, like so many other passages in the noble historian, is calculated rather to mislead the reader. All the principal men who headed the popular party in the long parliament were members of this; and the whole body, so far as their subsequent conduct shows, was not at all constituted of different elements from the rest; for I find, by comparison of the list of this parliament, in Nalson's Collections, with that of the long parliament, in the Parliamentary History, that eighty, at most, who had not sat in the former, took the covenant; and that seventy-three, in the same circumstances, sat in the king's convention at Oxford. The difference, therefore, was not so much in the men as in the times: the bad administration and bad success of 1640, as well as the dissolution of the short parliament, having greatly aggravated the public discontents.

The court had never augured well of this parliament. "The elections," as lord

though cautiously abstaining from any intemperance, so much as to reprove a member for calling ship-money an abomination (no very outrageous expression), they sufficiently manifested a determination not to leave their grievances unredressed. Petitions against the manifold abuses in church and state covered their table; Pym, Rudyard, Waller, lord Digby, and others more conspicuous afterwards, excited them by vigorous speeches; they appointed a committee to confer with the lords, according to some precedents of the last reign, on a long list of grievances, divided into ecclesiastical innovations, infringements of the propriety of goods, and breaches of the privilege of parliament. They voted a request of the peers, who, Clarendon says, were more entirely at the king's disposal, that they would begin with the business of supply, and not proceed to debate on grievances till afterwards, to be a high breach of privilege.[y] There is not the smallest reason to doubt that they would have insisted on redress in all those particulars with at least as much zeal as any former parliament, and that the king, after obtaining his subsidies, would have put an end to their remonstrances, as he had done before.[z] In order to obtain the supply he demanded, namely, twelve subsidies, to be paid in three years, which, though unusual, was certainly not beyond his exigencies, he offered to release his claim to ship-money in any manner they should point out. But this the commons indignantly repelled. They deemed ship-money the great crime of his administration, and the judgment against Mr. Hampden the infamy of those who pronounced it. Till that judgment should be annulled, and those judges punished, the national liberties must be as

Northumberland writes to lord Leicester at Paris (Sidney Papers, ii. 641), "that are generally made of knights and burgesses in this kingdom, give us cause to fear that the parliament will not sit long; for such as have dependence upon the court are in divers places refused, and the most refractory persons chosen."

There are some strange things said by Clarendon of the ignorance of the commons as to the value of twelve subsidies, which Hume, who loves to depreciate the knowledge of former times, implicitly copies. But they cannot be true of that enlightened body, whatever blunders one or two individuals might commit. The rate at which every man's estate was assessed to a subsidy was perfectly notorious; and the burden of twelve subsidies, to be paid in three years, was more than the charge of ship-money they had been enduring.

[y] Journals. Parl. Hist. Nalson. Clarendon.

[z] The king had long before said that "parliaments are like cats: they grow curst with age."

precarious as ever. Even[a] if they could hear of a compromise with so flagrant a breach of the constitution, and of purchasing their undoubted rights, the doctrine asserted in Mr. Hampden's case by the crown lawyers, and adopted by some of the judges, rendered all stipulations nugatory. The right of taxation had been claimed as an absolute prerogative so inherent in the crown that no act of parliament could take it away. All former statutes, down to the Petition of Right, had been prostrated at the foot of the throne; by what new compact were the present parliament to give a sanctity more inviolable to their own?[a]

It will be in the recollection of my readers that, while the commons were deliberating whether to promise any supply before the redress of grievances, and in what measure, sir Henry Vane, the secretary, told them that the king would accept nothing less than the twelve subsidies he had required; in consequence of which the parliament was dissolved next day. Clarendon, followed by several others, has imputed treachery in this to Vane, and told us that the king regretted so much what he had done, that he wished, had it been practicable, to recall the parliament after its dissolution. This is confirmed, as to Vane, by the queen herself, in that interesting narrative which she communicated to madame de Motteville.[b] Were it not for such authorities, seemingly inde-

[a] See Mr. Waller's speech on Crawley's impeachment. Nalson, ii. 358.

[b] Mém. de Motteville, i. 238-278. P. Orleans, Rév. de l'Angleterre, tome iii., says the same of Vane; but his testimony may resolve itself into the former. It is to be observed that ship-money, which the king offered to relinquish, brought in 200,000*l.* a year, and that the proposed twelve subsidies would have amounted, at most, to 840,000*l.*, to be paid in three years. Is it surprising that, when the house displayed an intention not to grant the whole of this, as appears by Clarendon's own story, the king and his advisers should have thought it better to break off altogether? I see no reason for imputing treachery to Vane, even if he did not act merely by the king's direction. Clarendon says he and Herbert persuaded the king that the house "would pass such a vote against ship-money as would blast that revenue and other branches of the receipt; which others believed they would not have the confidence to have attempted, and very few that they would have had the credit to have compassed." P. 245. The word *they* is as inaccurate as is commonly the case with this writer's language. But does he mean that the house would not have passed a vote against ship-money? They had already entered on the subject, and sent for records; and he admits himself that they were resolute against granting subsidies as a consideration for the abandonment of that grievance. Besides, Hyde himself not only inveighs most severely in his History against ship-money, but was himself one of the managers of the impeachment against six judges for their conduct in regard to it; and his speech before the house of lords on that occasion is extant. Rushw. Abr. ii. 477. But this is merely one instance of his eternal inconsistency.

[a] It

pendent of each other, yet entirely tallying, I should have deemed it more probable that Vane, with whom the solicitor-general Herbert had concurred, acted solely by the king's command. Charles, who feared and hated all parliaments, had not acquiesced in the scheme of calling the present till there was no other alternative; an insufficient supply would have left him in a more difficult situation than before as to the use of those extraordinary means, as they were called, which his disposition led him to prefer: the intention to assail parts of his administration more dear to him than ship-money, and especially the ecclesiastical novelties, was apparent. Nor can we easily give him credit for this alleged regret at the step he had taken, when we read the declaration he put forth, charging the commons with entering on examination of his government in an insolent and audacious manner, traducing his administration of justice, rendering odious his officers and ministers of state, and introducing a way of bargaining and contracting with the king, as if nothing ought to be given him by them but what he should purchase, either by quitting somewhat of his royal prerogative, or by diminishing and lessening his revenue.[c] The unconstitutional practice of committing to prison some of the most prominent members, and searching their houses for papers, was renewed. And having broken loose again from the restraints of law, the king's sanguine temper looked to such a triumph over the Scots in the coming campaign as no prudent man could think probable.

This dissolution of parliament in May, 1640, appears to have been a very fatal crisis for the king's popularity. Those who, with the loyalty natural to Englishmen, had willingly ascribed his previous misgovernment to evil counsels, could not any longer avoid perceiving his mortal antipathy to any parliament that should not be as subservient as the cortes of Castile. The necessity of some great change became the common theme. "It

"It seems that the lord-lieutenant of Ireland wished from the beginning that matters should thus be driven to the utmost. For he wished the king to insist on a grant of money before any progress should be made in the removal of the abuses which had grown up—a proceeding at variance with that of the preceding parliament. No less did he vote for the violent measure of demanding twelve subsidies, only five at the utmost having been previously granted. He either entertained the view of thus gaining consideration with the king, or of moving him to an alliance with the Spaniards, in whose confidence he is." Montreuil's despatches, in Raumer, ii. 308.

[c] Parl. Hist. Rushworth. Nalson.

is impossible," says lord Northumberland, at that time a courtier, "that things can long continue in the condition they are now in; so general a defection in this kingdom hath not been known in the memory of any!"[d] Several of those who thought most deeply on public affairs now entered into a private communication with the Scots insurgents. It seems probable, from the well-known story of lord Saville's forged letter, that there had been very little connexion of this kind until the present summer.[e] And we may conjecture that, during this ominous interval, those great projects which were displayed in the next session acquired consistence and ripeness by secret discussions in the houses of the earl of Bedford and lord Say. The king meanwhile experienced aggravated misfortune and ignominy in his military operations. Ship-money indeed was enforced with greater rigour than before, several sheriffs and the lord mayor of London being prosecuted in the star-chamber for neglecting to levy it. Some citizens were imprisoned for refusing a loan. A new imposition was laid on the counties, under the name of coat-and-conduct-money, for clothing and defraying the travelling charges of the new levies.[f] A state of actual invasion, the Scots having passed the Tweed, might excuse some of these irregularities, if it could have been forgotten that the war itself was produced by the king's impolicy, and if the nation had not been prone to see friends and deliverers rather than enemies in the Scottish army. They were, at the best indeed, troublesome and expensive guests to the northern counties which they occupied; but the cost of their visit was justly laid at the king's door. Various arbitrary resources having been suggested in the council, and abandoned as inefficient and impracticable—such as the seizing the merchants' bullion in the Mint, or issuing a debased coin—the unhappy king adopted the hopeless scheme of convening a great council of all the peers at York, as the only alternative of a par-

Council of York.

[d] June 4, 1640. Sidney Papers, ii. 654.

[e] A late writer has spoken of this celebrated letter as resting on very questionable authority. Lingard, x. 43. It is, however, mentioned as a known fact by several contemporary writers, and particularly by the earl of Manchester, in his unpublished Memorials, from which Nalson has made extracts; and who could neither be mistaken nor have any apparent motive, in this private narrative, to deceive. Nalson, ii. 427.

[f] Rymer, xx. 432. Rushworth, Abr. iii. 163, &c. Nalson, i. 389, &c. Raumer, ii. 318.

liament.[g] It was foreseen that this assembly would only advise the king to meet his people in a legal way. The public voice could no longer be suppressed. The citizens of London presented a petition to the king, complaining of grievances, and asking for a parliament. This was speedily followed by one signed by twelve peers of popular character.[h] The lords assembled at York almost unanimously concurred in the same advice, to which the king, after some hesitation, gave his assent. They had more difficulty in bringing about a settlement with the Scots: the English army, disaffected and undisciplined, had already made an inglorious retreat; and even Strafford, though passionately against a treaty, did not venture to advise an engagement.[i] The majority of the peers, however, overruled all opposition; and in the alarming posture of his affairs, Charles had no resource but the dishonourable pacification of Ripon.[k] Anticipating the desertion of some who had partaken in his councils, and conscious that others would more stand in need of his support than be capable of affording any, he awaited in fearful suspense the meeting of parliament.

Convocation of the long parliament.

[g] Lord Clarendon seems not to have well understood the secret of this great council, and supposes it to have been suggested by those who wished for a parliament; whereas the Hardwicke Papers show the contrary: pp. 116 and 118. His notions about the facility of composing the public discontent are strangely mistaken. "Without doubt," he says, "that fire at that time, which did shortly after burn the whole kingdom, might have been covered under a bushel." But the whole of this introductory book of his History abounds with proofs that he had partly forgotten, partly never known, the state of England before the opening of the long parliament. In fact, the disaffection, or at least discontent, had proceeded so far in 1640 that no human skill could have averted a great part of the consequences. But Clarendon's partiality to the king, and to some of his advisers, leads him to see in every event particular causes, or an overruling destiny, rather than the sure operation of impolicy and misgovernment.

[h] These were Hertford, Bedford, Essex, Warwick, Paget, Wharton, Say, Brook, Kimbolton, Saville, Mulgrave, Bolingbroke. Nalson, 436, 437.

[i] This appears from the minutes of the council (Hardwicke Papers), and contradicts the common opinion. Lord Conway's disaster at Newburn was by no means surprising: the English troops, who had been lately pressed into service, were perfectly mutinous; some regiments had risen and even murdered their officers on the road. Rymer, 414, 425.

[k] The Hardwicke State Papers, ii. 168, &c., contain much interesting information about the council of York. See also the Clarendon Collection for some curious letters, with marginal notes by the king. In one of these he says, "The mayor now, with the city, are to be flattered, not threatened." P. 123. Windebank writes to him in another (Oct. 16, 1640) that the clerk of the lower house of parliament had come to demand the journal-book of the last assembly and some petitions, which, by the king's command, he (Windebank) had taken into his custody, and requests to know if they should be given up. Charles writes on the margin—"Ay, by all means" P. 132.

CHAPTER IX.

FROM THE MEETING OF THE LONG PARLIAMENT TO THE BEGINNING OF THE CIVIL WAR.

Character of Long Parliament—Its salutary Measures—Triennial Bill—Other beneficial Laws—Observations—Impeachment of Strafford—Discussion of its Justice—Act against Dissolution of Parliament without its Consent—Innovations meditated in the Church—Schism in the Constitutional Party—Remonstrance of November, 1641—Suspicions of the King's Sincerity—Question of the Militia—Historical Sketch of Military Force in England—Encroachments of the Parliament—Nineteen Propositions—Discussion of the respective Claims of the two Parties to Support—Faults of both.

Character of the long parliament.

WE are now arrived at that momentous period in our history which no Englishman ever regards without interest, and few without prejudice; the period from which the factions of modern times trace their divergence, which, after the lapse of almost two centuries, still calls forth the warm emotions of party-spirit, and affords a test of political principles; at that famous parliament, the theme of so much eulogy and of so much reproach; that synod of inflexible patriots with some, that conclave of traitorous rebels with others; that assembly, we may more truly say, of unequal virtue and chequered fame, which, after having acquired a higher claim to our gratitude, and effected more for our liberties, than any that had gone before or that has followed, ended by subverting the constitution it had strengthened, and by sinking in its decrepitude, and amidst public contempt, beneath a usurper it had blindly elevated to power. It seems agreeable to our plan, first to bring together those admirable provisions by which this parliament restored and consolidated the shattered fabric of our constitution, before we advert to its measures of more equivocal benefit, or its fatal errors; an arrangement not very remote from that of mere chronology, since the former were chiefly completed within the first nine months of its session,

Its salutary measures.

before the king's journey to Scotland in the summer of 1641.

It must, I think, be admitted by every one who concurs in the representation given in this work, and especially in the last chapter, of the practical state of our government, that some new securities of a more powerful efficacy than any which the existing laws held forth were absolutely indispensable for the preservation of English liberties and privileges. These, however sacred in name, however venerable by prescription, had been so repeatedly transgressed, that to obtain their confirmation, as had been done in the Petition of Right, and that as the price of large subsidies, would but expose the commons to the secret derision of the court. The king, by levying ship-money in contravention of his assent to that petition, and by other marks of insincerity, had given too just cause for suspicion that, though very conscientious in his way, he had a fund of casuistry at command that would always release him from any obligation to respect the laws. Again, to punish delinquent ministers was a necessary piece of justice; but who could expect that any such retribution would deter ambitious and intrepid men from the splendid lures of power? Whoever, therefore, came to the parliament of November, 1640, with serious and steady purposes for the public weal, and most, I believe, except mere courtiers, entertained such purposes according to the measure of their capacities and energies, must have looked to some essential change in the balance of government, some important limitations of royal authority, as the primary object of his attendance.

Nothing could be more obvious than that the excesses of the late unhappy times had chiefly originated in the long intermission of parliaments. No lawyer would have dared to suggest ship-money with the terrors of a house of commons before his eyes. But the king's known resolution to govern without parliaments gave bad men more confidence of impunity. This resolution was not likely to be shaken by the unpalatable chastisement of his servants and redress of abuses, on which the present parliament was about to enter. A statute as old as the reign of Edward III. had already provided that parliaments should be held "every year, or oftener if need

be."[a] But this enactment had in no age been respected. It was certain that, in the present temper of the administration, a law simply enacting that the interval between parliaments should never exceed three years would prove wholly ineffectual. In the famous act therefore for triennial parliaments, the first fruits of the commons' laudable zeal for reformation, such provisions were introduced as grated harshly on the ears of those who valued the royal prerogative above the liberties of the subject, but without which the act itself might have been dispensed with. Every parliament was to be ipso facto dissolved at the expiration of three years from the first day of its session, unless actually sitting at the time, and in that case at its first adjournment or prorogation. The chancellor or keeper of the great seal was to be sworn to issue writs for a new parliament within three years from the dissolution of the last, under pain of disability to hold his office, and further punishment: in case of his failure to comply with this provision, the peers were enabled and enjoined to meet at Westminster, and to issue writs to the sheriffs; the sheriffs themselves, should the peers not fulfil this duty, were to cause elections to be duly made; and, in their default, at a prescribed time the electors themselves were to proceed to choose their representatives. No future parliament was to be dissolved or adjourned without its own consent in less than fifty days from the opening of its session. It is more reasonable to doubt whether even these provisions would have afforded an adequate security for the periodical assembling of parliament, whether the supine and courtier-like character of the peers, the want of concert and energy in the electors themselves, would not have enabled the government to set the statute at nought, than to censure them as derogatory to the reasonable prerogative and dignity of the crown. To this important bill the king, with some apparent unwillingness, gave his assent.[b] It effected, indeed, a strange revolution in the system of his government. The nation set a due value on this admirable statute,

Triennial bill.

[a] 4 E. 3, c. 14. It appears by the Journals, 30th Dec. 1640, that the triennial bill was originally for the yearly holding of parliaments. It seems to have been altered in the committee; at least we find the title changed, Jan. 19.

[b] Parl. Hist. 702, 717. Stat. 16 Car. I, c. 1

the passing of which they welcomed with bonfires and every mark of joy.

After laying this solid foundation for the maintenance of such laws as they might deem necessary, the house of commons proceeded to cut away the more flagrant and recent usurpations of the crown. They passed a bill declaring ship-money illegal, and annulling the judgment of the exchequer chamber against Mr. Hampden.[c] They put an end to another contested prerogative, which, though incapable of vindication on any legal authority, had more support from a usage of fourscore years—the levying of customs on merchandise. In an act granting the king tonnage and poundage it is "declared and enacted that it is, and hath been, the ancient right of the subjects of this realm, that no subsidy, custom, impost, or other charge whatsoever, ought or may be laid or imposed upon any merchandise exported or imported by subjects, denizens, or aliens, without common consent in parliament."[d] This is the last statute that has been found necessary to restrain the crown from arbitrary taxation, and may be deemed the complement of those numerous provisions which the virtue of ancient times had extorted from the first and third Edwards. Beneficial laws.

Yet these acts were hardly so indispensable, nor wrought so essential a change in the character of our monarchy, as that which abolished the star-chamber. Though it was evident how little the statute of Henry VII. could bear out that overweening power it had since arrogated, though the statute-book and parliamentary records of the best ages were irrefragable testimonies against its usurpations; yet the course of precedents under the Tudor and Stuart families was so invariable that nothing more was at first intended than a bill to regulate that tribunal. A suggestion, thrown out, as Clarendon informs us, by one not at all Observations.

[c] Stat. 16 Car. I., c. 14.

[d] C. 8. The king had professed, in lord-keeper Finch's speech on opening the parliament of April, 1640, that he had only taken tonnage and poundage de facto, without claiming it as a right, and had caused a bill to be prepared granting it to him from the commencement of his reign. Parl. Hist. 533. See preface to Hargrave's Collection of Law Tracts, p. 195, and Rymer, xx. 118, for what Charles did with respect to impositions on merchandise. The long parliament called the farmers to account.

connected with the more ardent reformers, led to the substitution of a bill for taking it altogether away.[e] This abrogates all exercise of jurisdiction, properly so called, whether of a civil or criminal nature, by the privy council as well as the star-chamber. The power of examining and committing persons charged with offences is by no means taken away; but, with a retrospect to the language held by the judges and crown lawyers in some cases that have been mentioned, it is enacted, that every person committed by the council or any of them, or by the king's special command, may have his writ of habeas corpus; in the return to which, the officer in whose custody he is shall certify the true cause of his commitment, which the court from whence the writ has issued shall within three days examine, in order to see whether the cause thus certified appear to be just and legal or not, and do justice accordingly by delivering, bailing, or remanding the party. Thus fell the great court of star-chamber, and with it the whole irregular and arbitrary practice of government, that had for several centuries so thwarted the operation and obscured the light of our free constitution, that many have been prone to deny the existence of those liberties which they found so often infringed, and to mistake the violations of law for its standard.

With the court of star-chamber perished that of the high-commission, a younger birth of tyranny, but perhaps even more hateful, from the peculiar irritation of the times. It had stretched its authority beyond the tenor of the act of Elizabeth whereby it had been created, and which limits its competence to the correction of ecclesiastical offences according to the known boundaries of ecclesiastical jurisdiction, assuming a right not only

[e] 16 Car. I. c. 10. The abolition of the star-chamber was first moved, March 5th, 1641, by lord Andover, in the house of lords, to which he had been called by writ. Both he and his father, the earl of Berkshire, were zealous royalists during the subsequent war. Parl. Hist. 722. But he is not, I presume, the person to whom Clarendon alludes. This author insinuates that the act for taking away the star-chamber passed both houses without sufficient deliberation, and that the peers did not venture to make any opposition; whereas there were two conferences between the houses on the subject, and several amendments and provisos made by the lords and agreed to by the commons. Scarce any bill, during this session, received so much attention. The king made some difficulty about assenting to the bills taking away the star-chamber and high-commission courts, but soon gave way Parl. Hist. 853.

to imprison, but to fine, the laity, which was generally reckoned illegal.[f] The statute repealing that of Elizabeth, under which the high commission existed, proceeds to take away from the ecclesiastical courts all power of inflicting temporal penalties, in terms so large, and doubtless not inadvertently employed, as to render their jurisdiction nugatory. This part of the act was repealed after the Restoration; and, like the other measures of that time, with little care to prevent the recurrence of those abuses which had provoked its enactments.[g]

A single clause in the act that abolished the star-chamber was sufficient to annihilate the arbitrary jurisdiction of several other irregular tribunals, grown out of the despotic temper of the Tudor dynasty:—the court of the president and council of the North, long obnoxious to the common lawyers, and lately the sphere of Strafford's tyrannical arrogance;[h] the court of the president and council of Wales and the Welsh marches, which had pretended, as before mentioned, to a jurisdiction over the adjacent counties of Salop, Worcester, Hereford, and Gloucester; with those of the duchy of Lancaster and county palatine of Chester. These, under various pretexts, had usurped so extensive a cognizance as to deprive one-third of England of the privileges of the common law. The jurisdiction, however, of the two latter courts in matters touching the king's private estate has not been taken away by the statute. Another act afforded remedy for some abuses in the stannary courts of Cornwall and Devon.[i] Others retrenched the vexatious prerogative of purveyance, and took away that of compulsory knighthood.[k] And one of greater importance put an end to a fruitful source of oppression and complaint by determining for ever the extent of royal forests,

[f] Coke has strongly argued the illegality of fining and imprisoning by the high commission; 4th Inst. 324. And he omitted this power in a commission he drew, "leaving us," says bishop Williams, "nothing but the old rusty sword of the church, excommunication." Cabala, p. 103. Care was taken to restore this authority in the reign of Charles.

[g] 16 Car. I. c. 11.

[h] Hyde distinguished himself as chairman of the committee which brought in the bill for abolishing the court of York. In his speech on presenting this to the lords he alludes to the tyranny of Strafford, not rudely, but in a style hardly consistent with that of his History. Parl. Hist. 766. The editors of this, however, softened a little what he did say in one or two places; as where he uses the word *tyranny* in speaking of lord Mountnorris's case.

[i] C. 15.

[k] C. 19, 20.

according to their boundaries in the twentieth year of James, annulling all the perambulations and inquests by which they had subsequently been enlarged.[m]

I must here reckon, among the beneficial acts of this parliament, one that passed some months afterwards, after the king's return from Scotland, and perhaps the only measure of that second period on which we can bestow unmixed commendation. The delays and uncertainties of raising troops by voluntary enlistment, to which the temper of the English nation, pacific though intrepid, and impatient of the strict control of martial law, gave small encouragement, had led to the usage of pressing soldiers for service, whether in Ireland or on foreign expeditions. This prerogative seeming dangerous and oppressive, as well as of dubious legality, it is recited in the preamble of an act empowering the king to levy troops by this compulsory method for the special exigency of the Irish rebellion, that, "by the laws of this realm, none of his majesty's subjects ought to be impressed or compelled to go out of his country to serve as a soldier in the wars, except in case of necessity of the sudden coming in of strange enemies into the kingdom, or except they be otherwise bound by the tenure of their lands or possessions."[n] The king, in a speech from the throne, adverted to this bill while passing through the houses, as an invasion of his prerogative. This notice of a parliamentary proceeding the commons resented as a breach of their privilege; and having obtained the consent of the lords to a joint remonstrance, the king, who was in no state to maintain his objection, gave his assent to the bill. In the reigns of Elizabeth and James we have seen frequent instances of the crown's interference as to matters debated in parliament. But from the time of the long parliament the law of privilege, in this respect, has stood on an unshaken basis.[o]

These are the principal statutes which we owe to this parliament. They give occasion to two remarks of no

[m] 16 Car. I. c. 16.

[n] C. 28.

[o] Journals, 16th Dec. Parl. Hist. 968. Nalson, 750. It is remarkable that Clarendon, who is sufficiently jealous of all that he thought encroachment in the commons, does not censure their explicit assertion of this privilege. He lays the blame of the king's interference on St. John's advice; which is very improbable.

slight importance. In the first place, it will appear, on comparing them with our ancient laws and history, that they made scarce any material change in our constitution such as it had been established and recognised under the house of Plantagenet: the law for triennial parliaments even receded from those unrepealed provisions of the reign of Edward III., that they should be assembled annually. The court of star-chamber, if it could be said to have a legal jurisdiction at all, which by that name it had not, traced it only to the Tudor period; its recent excesses were diametrically opposed to the existing laws and the protestations of ancient parliaments. The court of ecclesiastical commission was an offset of the royal supremacy, established at the Reformation. The impositions on merchandise were both plainly illegal, and of no long usage. That of ship-money was flagrantly, and by universal confession, a strain of arbitrary power without pretext of right. Thus, in by far the greater part of the enactments of 1641, the monarchy lost nothing that it had anciently possessed; and the balance of our constitution might seem rather to have been restored to its former equipoise than to have undergone any fresh change.

But those common liberties of England which our forefathers had, with such commendable perseverance, extorted from the grasp of power, though by no means so merely theoretical and nugatory in effect as some would insinuate, were yet very precarious in the best periods, neither well defined, nor exempt from anomalous exceptions, or from occasional infringements. Some of them, such as the statute for annual sessions of parliament, had gone into disuse. Those that were most evident could not be enforced; and the new tribunals that, whether by law or usurpation, had reared their heads over the people, had made almost all public and personal rights dependent on their arbitrary will. It was necessary, therefore, to infuse new blood into the languid frame, and so to renovate our ancient constitution that the present era should seem almost a new birth of liberty. Such was the aim, especially, of those provisions which placed the return of parliaments at fixed intervals, beyond the power of the crown to elude. It was hoped that by their means, so long as a sense of

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public spirit should exist in the nation (and beyond that time it is vain to think of liberty), no prince, however able and ambitious, could be free from restraint for more than three years; an interval too short for the completion of arbitrary projects, and which few ministers would venture to employ in such a manner as might expose them to the wrath of parliament.

It is to be observed, in the second place, that by these salutary restrictions, and some new retrenchments of pernicious or abused prerogative, the long parliament formed our constitution such nearly as it now exists. Laws of great importance were doubtless enacted in subsequent times, particularly at the Revolution; but none of them, perhaps, were strictly necessary for the preservation of our civil and political privileges; and it is rather from 1641 than any other epoch, that we may date their full legal establishment. That single statute which abolished the star-chamber gave every man a security which no other enactments could have afforded, and which no government could essentially impair. Though the reigns of the two latter Stuarts, accordingly, are justly obnoxious, and were marked by several illegal measures, yet, whether we consider the number and magnitude of their transgressions of law, or the practical oppression of their government, these princes fell very short of the despotism that had been exercised, either under the Tudors or the two first of their own family.

From this survey of the good works of the long parliament we must turn our eyes with equal indifference to the opposite picture of its errors and offences; faults which, though the mischiefs they produced were chiefly temporary, have yet served to obliterate from the recollection of too many the permanent blessings we have inherited through its exertions. In reflecting on the events which so soon clouded a scene of glory, we ought to learn the dangers that attend all revolutionary crises, however justifiable or necessary; and that, even when posterity may have cause to rejoice in the ultimate result, the existing generation are seldom compensated for their present loss of tranquillity. The very enemies of this parliament confess that they met in November 1640 with almost unmingled zeal for the public good,

and with loyal attachment to the crown. They were the chosen representatives of the commons of England, in an age more eminent for steady and scrupulous conscientiousness in private life than any, perhaps, that had gone before or has followed; not the demagogues or adventurers of transient popularity, but men well-born and wealthy, than whom there could perhaps never be assembled five hundred more adequate to redress the grievances, or to fix the laws, of a great nation. But they were misled by the excess of two passions, both just and natural in the circumstances wherein they found themselves, resentment and distrust; passions eminently contagious, and irresistible when they seize on the zeal and credulity of a popular assembly. The one betrayed them into a measure certainly severe and sanguinary, and in the eyes of posterity exposed to greater reproach than it deserved, the attainder of lord Strafford, and some other proceedings of too much violence; the other gave a colour to all their resolutions, and aggravated their differences with the king till there remained no other arbitrator but the sword.

Impeachment of Strafford.

Those who know the conduct and character of the earl of Strafford, his abuse of power in the North, his far more outrageous transgressions in Ireland, his dangerous influence over the king's counsels, cannot hesitate to admit, if indeed they profess any regard to the constitution of this kingdom, that to bring so great a delinquent to justice according to the known process of law was among the primary duties of the new parliament. It was that which all, with scarce an exception but among his own creatures (for most of the court were openly or in secret his enemies[p]), ardently desired; yet which the king's favour and his own commanding genius must have rendered a doubtful enterprise. He came to London, not uncon-

[p] "A greater and more universal hatred," says Northumberland in a letter to Leicester, Nov. 13, 1640 (Sidney Papers, ii. 663), "was never contracted by any person than he has drawn upon himself. He is not at all dejected, but believes confidently to clear himself in the opinion of all equal and indifferent-minded hearers, when he shall come to make his defence. The king is in such a strait that I do not know how he will possibly avoid, without endangering the loss of the whole kingdom, the giving way to the remove of divers persons, as well as other things that will be demanded by the parliament. After they have done questioning some of the great ones, they intend to endeavour the displacing of Jermyn, Newcastle, and Walter Montague."

scious of the danger, by his master's direct injunctions. The first days of the session were critical; and any vacillation or delay in the commons might probably have given time for some strong exertion of power to frustrate their designs. We must therefore consider the bold suggestion of Pym, to carry up to the lords an impeachment for high treason against Strafford, not only as a master-stroke of that policy which is fittest for revolutions, but as justifiable by the circumstances wherein they stood. Nothing short of a commitment to the Tower would have broken the spell that so many years of arbitrary dominion had been working. It was dissipated in the instant that the people saw him in the hands of the usher of the black rod: and with his power fell also that of his master; so that Charles, from the very hour of Strafford's impeachment, never once ventured to resume the high tone of command congenial to his disposition, or to speak to the commons but as one complaining of a superior force.[q]

[q] Clarendon, i. 305. No one opposed the resolution to impeach the lord-lieutenant, save that Falkland suggested the appointment of a committee, as more suitable to the gravity of their proceedings. But Pym frankly answered that this would ruin all; since Strafford would doubtless obtain a dissolution of the parliament, unless they could shut him out from access to the king.

The letters of Robert Baillie, Principal of the University of Glasgow (two vols., Edinburgh, 1775), abound with curious information as to this period, and for several subsequent years. Baillie was one of the Scots commissioners deputed to London at the end of 1640, and took an active share in promoting the destruction of episcopacy. His correspondence breathes all the narrow and exclusive bigotry of the presbyterian school. The following passage is so interesting, that, notwithstanding its length, it may find a place here:—

"The lieutenant of Ireland came but on Monday to town late, on Tuesday rested, on Wednesday came to parliament, but ere night he was caged. Intolerable pride and oppression cries to heaven for a vengeance. The lower house closed their doors; the speaker kept the keys till his accusation was concluded. Thereafter Mr. Pym went up, with a number at his back, to the higher house; and, in a pretty short speech, did, in the name of the lower house, and in the name of the commons of all England, accuse Thomas earl of Strafford, lord-lieutenant of Ireland, of high treason; and required his person to be arrested till probation might be heard; so Mr. Pym and his back were removed. The lords began to consult on that strange and unexpected motion. The word goes in haste to the lord-lieutenant, where he was with the king; with speed he comes to the house; he calls rudely at the door; James Maxwell, keeper of the black rod, opens: his lordship, with a proud glooming countenance, makes towards his place at the board head: but at once many bid him void the house; so he is forced, in confusion, to go to the door till he was called. After consultation, being called in, he stands, but is commanded to kneel, and on his knees to hear the sentence. Being on his knees, he is delivered to the keeper of the black rod, to be prisoner till he was cleared of these crimes the house of commons had charged him with. He offered to speak, but was commanded to be gone without a word. In the outer room,

The articles of Strafford's impeachment relate principally to his conduct in Ireland. For though he had begun to act with violence in the court of York, as lord-president of the North, and was charged with having procured a commission investing him with exorbitant power, yet he had too soon left that sphere of dominion for the lieutenancy of Ireland to give any wide scope for prosecution. But in Ireland it was sufficiently proved that he had arrogated an authority beyond what the crown had ever lawfully enjoyed, and even beyond the example of former viceroys of that island, where the disordered state of society, the frequency of rebellions, and the distance from all control, had given rise to such a series of arbitrary precedents as would have almost excused any ordinary stretch of power.[r] Notwithstanding this, however, when the managers came to state and substantiate their articles of accusation, though some were satisfied that there was

Discussion of its justice.

James Maxwell required him, as prisoner, to deliver his sword. When he had got it, he cries with a loud voice for his man to carry my lord-lieutenant's sword. This done, he makes through a number of people towards his coach; all gazing, no man capping to him, before whom, that morning, the greatest of England would have stood uncovered, all crying, 'What is the matter?' He said, 'A small matter, I warrant you.' They replied, 'Yes, indeed, high treason is a small matter.' Coming to the place where he expected his coach, it was not there; so he behoved to return that same way, through a world of gazing people. When at last he had found his coach, and was entering, James Maxwell told him, 'Your lordship is my prisoner, and must go in my coach;' and so he behoved to do." P. 217.

[r] The trial of Strafford is best to be read in Rushworth or Nalson. The account in the new edition of the State Trials, I know not whence taken, is curious, as coming from an eye-witness, though very partial to the prisoner; but it can hardly be so accurate as the others. His famous peroration was printed at the time in a loose sheet. It is in the Somers Tracts. Many of the charges seem to have been sufficiently proved, and would undoubtedly justify a severe sentence on an impeachment for misdemeanors. It was not pretended by the managers that more than two or three of them amounted to treason; but it is the unquestionable right of the commons to blend offences of a different degree in an impeachment.

It has been usually said that the commons had recourse to the bill of attainder because they found it impossible to support the impeachment for treason. But St. John positively denies that it was intended to avoid the judicial mode of proceeding. Nalson, ii. 162. And, what is stronger, the lords themselves voted upon the articles judicially, and not as if they were enacting a legislative measure. As to the famous proviso in the bill of attainder, that the judges should determine nothing to be treason by virtue of this bill which they would not have determined to be treason otherwise (on which Hume and many others have relied to show the consciousness of parliament that the measure was not warranted by the existing law), it seems to have been introduced in order to quiet the apprehensions of some among the peers, who had gone great lengths with the late government, and were astonished to find that their obedience to the king could be turned into treason against him.

enough to warrant the severest judgment, yet it appeared to many dispassionate men that, even supposing the evidence as to all of them to be legally convincing, they could not, except through a dangerous latitude of construction, be aggravated into treason. The law of England is silent as to conspiracies against itself. St. John and Maynard struggled in vain to prove that a scheme to overturn the fundamental laws and to govern by a standing army, though as infamous as any treason, could be brought within the words of the statute of Edward III., as a compassing of the king's death. Nor, in fact, was there any conclusive evidence against Strafford of such a design. The famous words imputed to him by sir Henry Vane, though there can be little reason to question that some such were spoken, seem too imperfectly reported,[a] as well as uttered too much in the heat of passion, to furnish a substantive accusation; and I should rather found my conviction of Strafford's systematic hostility to our fundamental laws on his correspondence since brought to light, as well as on his general conduct in administration, than on any overt acts proved on his impeachment. The presumption of history, to whose mirror the scattered rays of moral evidence converge, may be irresistible, when the legal inference from insulated actions is not only technically, but substantially, inconclusive. Yet we are not to suppose that the charges against this minister appeared so evidently to fall short of high treason, according to the apprehension of that age, as in later times has usually been taken for granted. Accustomed to the unjust verdicts obtained in cases of treason by the court, the statute of Edward having been perpetually stretched by constructive interpretations, neither the people nor the lawyers annexed a definite sense to that crime. The judges themselves, on a solemn reference by the house of lords for their

[a] They were confirmed, in a considerable degree, by the evidence of Northumberland and Bristol, and even of Usher and Juxon. Rushw. Abr. iv. 455, 559, 586; Baillie, 284. But are they not also exactly according to the principles always avowed and acted upon by that minister, and by the whole phalanx of courtiers, that a king of England does very well to ask his people's consent in the first instance, but, if that is frowardly refused, he has a paramount right to maintain his government by any means?

It may be remarked that Clarendon says "the law was clear that less than two witnesses ought not to be received in a case of treason." Yet I doubt whether any one had been allowed the benefit of that law; and the contrary had been asserted repeatedly by the judges.

opinion whether some of the articles charged against Strafford amounted to treason, answered unanimously, that, upon all which their lordships had voted to be proved, it was their opinion the earl of Strafford did deserve to undergo the pains and penalties of high treason by law.[t] And, as an apology, at least, for this judicial opinion, it may be remarked that the fifteenth article of the impeachment, charging him with raising money by his own authority, and quartering troops on the people of Ireland, in order to compel their obedience to his unlawful requisitions (upon which, and one other article, not on the whole matter, the peers voted him guilty), does, in fact, approach very nearly, if we may not say more, to a substantive treason within the statute of Edward III., as a levying war against the king, even without reference to some Irish acts of parliament upon which the managers of the impeachment relied. It cannot be extravagant to assert that, if the colonel of a regiment were to issue an order commanding the inhabitants of the district where it is quartered to contribute certain sums of money, and were to compel the payment by quartering troops on the houses of those who refused, in a general and systematic manner, he would, according to a warrantable construction of the statutes, be guilty of the treason called levying war on the king; and that, if we could imagine him to do this by an order from the privy council or the war-office, the case would not be at all altered. On the other hand, a single act of such violence might be (in technical language) trespass, misdemeanor, or felony, according to circumstances; but would want the generality which, as the statute has been construed, determines its character to be treason. It is however manifest that Strafford's actual enforcement of his order, by quartering soldiers, was not by any means proved to be so fre-

[t] Lords' Journals, May 6; Parl. Hist. 757. This opinion of the judges, which is not mentioned by Clarendon, Hume, and other common historians, seems to have cost Strafford his life. It was relied on by some bishops, especially Usher, whom Charles consulted whether he should pass the bill of attainder, though Clarendon puts much worse casuistry into the mouth of Williams. Parr's Life of Usher, p. 45; Hacket's Life of Williams, p. 160. Juxon is said to have stood alone, among five bishops, in advising the king to follow his conscience. Clarendon, indeed, does not mention this, though he glances at Usher with some reproach, p. 451; but the story is as old as the Icon Basilikè, in which it is alluded to

quently done as to bring it within the line of treason; and the evidence is also open to every sort of legal objection. But in that age the rules of evidence, so scrupulously defined since, were either very imperfectly recognised, or continually transgressed. If then Strafford could be brought within the letter of the law, and if he were also deserving of death for his misdeeds towards the commonwealth, it might be thought enough to justify his condemnation, although he had not offended against what seemed to be the spirit and intention of the statute. This should, at least, restrain us from passing an unqualified censure on those who voted against him, comprehending undoubtedly the far more respectable portion of the commons, though only twenty-six peers against nineteen formed the feeble majority on the bill of attainder.[u] It may be observed that the house of commons acted in one respect with a generosity which the crown had never shown in any case of treason, by

[u] The names of the fifty-nine members of the commons who voted against the bill of attainder, and which were placarded as Straffordians, may be found in the Parliamentary History and several other books. It is remarkable that few of them are distinguished persons, none so much so as Selden, whose whole parliamentary career, notwithstanding the timidity not very fairly imputed to him, was eminently honourable and independent. But we look in vain for Hyde, Falkland, Colepepper, or Palmer. The first, probably, did not vote; the others may have been in the majority of 204 by whom the bill was passed; indeed, I have seen a MS. account of the debate, where Falkland and Colepepper appear to have both spoken for it. As to the lords, we have, so far as I know, no list of the nineteen who acquitted Strafford. It does not comprehend Hertford, Bristol, or Holland, who were absent (Nalson, 316), nor any of the popish lords, whether through fear or any private influence. Lord Clare, his brother-in-law, and lord Saville, a man of the most changeable character, were his prominent advocates during the trial; though Bristol, Hertford, and even Say, desired to have had his life spared (Baillie, 243, 247, 271, 292); and the earl of Bedford, according to Clarendon, would have come into this. But the sudden and ill-timed death of that eminent peer put an end to the negotiation for bringing the parliamentary leaders into office, wherein it was a main object with the king to save the life of Strafford—entirely, as I am inclined to believe, from motives of conscience and honour, without any views of ever again restoring him to power. Charles had no personal attachment to Strafford; and the queen's dislike of him (according to Clarendon and Burnet, though it must be owned that Madame de Motteville does not confirm this), or at least his general unpopularity at court, would have determined the king to lay him aside.

It is said by Burnet that the queen prevailed on Charles to put that strange postscript to his letter to the lords, in behalf of Strafford, "If he must die, it were charity to reprieve him till Saturday;" by which he manifestly surrendered him up, and gave cause to suspect his own sincerity. Doubts have been thrown out by Carte as to the genuineness of Strafford's celebrated letter requesting the king to pass the bill of attainder. They do not appear to be founded on much evidence; but it is certain, by the manner in which he received the news, that he did not expect to be sacrificed by his master

immediately passing a bill to relieve his children from the penalties of forfeiture and corruption of blood.

It is undoubtedly a very important problem in political ethics, whether great offences against the commonwealth may not justly incur the penalty of death by a retrospective act of the legislature, which a tribunal restrained by known laws is not competent to inflict. Bills of attainder had been by no means uncommon in England, especially under Henry VIII.; but generally when the crime charged might have been equally punished by law. They are less dangerous than to stretch the boundaries of a statute by arbitrary construction. Nor do they seem to differ at all in principle from those bills of pains and penalties which, in times of comparative moderation and tranquillity, have sometimes been thought necessary to visit some unforeseen and anomalous transgression beyond the reach of our penal code. There are many, indeed, whose system absolutely rejects all such retrospective punishment, either from the danger of giving too much scope to vindictive passion, or on some more abstract principle of justice. Those who may incline to admit that the moral competence of the sovereign power to secure itself by the punishment of a heinous offender, even without the previous warning of law, is not to be denied, except by reasoning which would shake the foundation of its right to inflict punishment in ordinary cases, will still be sensible of the mischief which any departure from stable rules, under the influence of the most public-spirited zeal, is likely to produce. The attainder of Strafford could not be justifiable, unless it were necessary; nor necessary, if a lighter penalty would have been sufficient for the public security.

This therefore becomes a preliminary question, upon which the whole mainly turns. It is one which does not seem to admit of a demonstrative answer; but with which we can perhaps deal better than they who lived at that time. Their distrust of the king, their apprehension that nothing less than the delinquent minister's death could insure them from his return to power, rendered the leaders of parliament obstinate against any proposition of a mitigated penalty. Nor can it be denied that there are several instances in history where the favourites of monarchs, after a transient exile or im-

prisonment, have returned, on some fresh wave of fortune, to mock or avenge themselves upon their adversaries. Yet the prosperous condition of the popular party, which nothing but intemperate passion was likely to impair, rendered this contingency by no means probable; and it is against probable dangers that nations should take precautions, without aiming at more complete security than the baffling uncertainties of events will permit. Such was Strafford's unpopularity, that he could never have gained any sympathy, but by the harshness of his condemnation and the magnanimity it enabled him to display. These have half redeemed his forfeit fame, and misled a generous posterity. It was agreed on all hands that any punishment which the law could award to the highest misdemeanors, duly proved on impeachment, must be justly inflicted. "I am still the same," said lord Digby, in his famous speech against the bill of attainder, "in my opinions and affections, as unto the earl of Strafford; I confidently believe him to be the most dangerous minister, the most insupportable to free subjects, that can be charactered. I believe him to be still that grand apostate to the commonwealth, who must not expect to be pardoned in this world till he be despatched to the other. And yet let me tell you, Mr. Speaker, my hand must not be to that despatch."[x] These sentiments, whatever we may think of the sincerity of him who uttered them, were common to many of those who desired most ardently to see that uniform course of known law which neither the court's lust of power nor the clamorous indignation of a popular assembly might turn aside. The king, whose conscience was so deeply wounded by his acquiescence in this minister's death, would gladly have assented to a bill inflicting the penalty of perpetual banishment; and this, accompanied, as it ought to have been, by degradation from the rank for which he had sold his integrity, would surely have exhibited to Europe an example sufficiently conspicuous of just retribution. Though nothing perhaps could have restored a tolerable degree of confidence between Charles and the parliament, it is certain that his resentment and aversion were much aggravated by

[x] Parliamentary History, ii. 750.

the painful compulsion they had put on him, and that the schism among the constitutional party began from this, among other causes, to grow more sensible, till it terminated in civil war.[7]

But, if we pay such regard to the principles of clemency and moderation, and of adherence to the fixed rules of law, as to pass some censure on this deviation from them in the attainder of lord Strafford, we must not yield to the clamorous invectives of his admirers, or treat the prosecution as a scandalous and flagitious excess of party vengeance. Look round the nations of the globe, and say in what age or country would such a man have fallen into the hands of his enemies without paying the forfeit of his offences against the commonwealth with his life. They who grasp at arbitrary power, they who make their fellow-citizens tremble before them, they who gratify a selfish pride by the humiliation and servitude of mankind, have always played a deep stake; and the more invidious and intolerable has been their preeminence, their fall has been more destructive and their punishment more exemplary. Something beyond the retirement or the dismissal of such ministers has seemed necessary to "absolve the gods," and furnish history with an awful lesson of retribution. The spontaneous instinct of nature has called for the axe and the gibbet against such capital delinquents. If, then, we blame in some measure the sentence against Strafford, it is not for his sake, but for that of the laws on which he trampled, and of the liberty which he betrayed. He died justly before God and man, though we may deem the precedent

[7] See some judicious remarks on this by May, p. 64, who generally shows a good deal of impartiality at this period of history. The violence of individuals, especially when of considerable note, deserves to be remarked as characteristic of the temper that influenced the house, and as accounting for the disgust of moderate men. "Why should he have law himself?" said St. John, in arguing the bill of attainder before the peers, "who would not that others should have any? We indeed give laws to hares and deer, because they are beasts of chace; but we give none to wolves and foxes, but knock them on the head wherever they are found, because they are beasts of prey." Nor was this a mere burst of passionate declamation, but urged as a serious argument for taking away Strafford's life without sufficient grounds of law or testimony. Rushworth, Abr. iv. 61. Clarendon, i. 407. Strode told the house that, as they had charged Strafford with high treason, it concerned them to charge as conspirators in the same treason all who had before, or should hereafter, plead in that cause. Baillie, 252. This monstrous proposal seems to please the presbyterian bigot. "If this hold," he observes "Strafford's counsel will be rare."

dangerous, and the better course of a magnanimous lenity unwisely rejected; and in condemning the bill of attainder we cannot look upon it as a crime.

The same distrustful temper, blamable in nothing but its excess, drew the house of commons into a measure more unconstitutional than the attainder of Strafford, the bill enacting that they should not be dissolved without their own consent. Whether or not this had been previously meditated by the leaders is uncertain; but the circumstances under which it was adopted display all the blind precipitancy of fear. A scheme for bringing up the army from the north of England to overawe parliament had been discoursed of, or rather in a great measure concerted, by some young courtiers and military men. The imperfection and indefiniteness of the evidence obtained respecting this plot increased, as often happens, the apprehensions of the commons. Yet, difficult as it might be to fix its proper character between a loose project and a deliberate conspiracy, this at least was hardly to be denied, that the king had listened to and approved a proposal of appealing from the representatives of his people to a military force.[z] Their greatest danger was a sudden

Act against dissolution of parliament without its consent.

[z] Clarendon and Hume of course treat this as a very trifling affair, exaggerated for factious purposes. But those who judge from the evidence of persons unwilling to accuse themselves or the king, and from the natural probabilities of the case, will suspect, or rather be wholly convinced, that it had gone much farther than these writers admit. See the accounts of this plot in Rushworth and Nalson, or in the Parliamentary History, also what is said by Montreuil in Raumer, p. 324. The strongest evidence, however, is furnished by Henrietta, whose relation of the circumstances to Madame de Motteville proves that the king and herself had the strongest hopes from the influence of Goring and Wilmot over the army, by means of which they aimed at saving Strafford's life; though the jealousy of those ambitious intriguers, who could not both enjoy the place to which each aspired, broke the whole plot. Mém. de Motteville, i. 253. Compare with this passage Percy's letter and Goring's deposition (Nalson, ii. 286, 294), for what is said of the king's privity by men who did not lose his favour by their evidence. Mr. Brodie has commented in a long note (iii. 189) on Clarendon's apparent misrepresentations of this business. But what has escaped the acuteness of this writer is, that the petition to the king and parliament, drawn up for the army's subscription, and asserted by Clarendon to have been the only step taken by those engaged in the supposed conspiracy (though not, as Mr. Brodie too rashly conjectures, a fabrication of his own), is most carelessly referred by him to that period, or to the agency of Wilmot and his coadjutors—having been, in fact, prepared about the July following, at the instigation of Daniel O'Neale and some others of the royalist party. This is manifest, not only from the allusions it contains to events that had not occurred in the months of March and April, when the plot of Wilmot and Goring was on foot, especially the bill for triennial parliaments, but from evidence given before the house of commons in October, 1641

dissolution. The triennial bill afforded, indeed, a valuable security for the future. Yet, if the present parliament had been broken with any circumstances of violence, it might justly seem very hazardous to confide in the right of spontaneous election reserved to the people by that statute, which the crown would have three years to defeat. A rapid impulse, rather than any concerted resolution, appears to have dictated this hardy encroachment on the prerogative. The bill against the dissolution of the present parliament without its own consent was resolved in a committee on the fifth of May, brought in the next day, and sent to the lords on the seventh. The upper house, in a conference the same day, urged a very wise and constitutional amendment, limiting its duration to the term of two years. But the commons adhering to their original provisions, the bill was passed by both houses, on the eighth.[a] Thus, in the space of three days from the first suggestion, an alteration was made in the frame of our polity which rendered the house of commons equally independent of the sovereign and their constituents; and, if it could be supposed capable of being maintained in more tranquil times, would, in the theory at least of speculative politics, have gradually converted the government into something like a Dutch aristocracy. The ostensible pretext was, that money could not be borrowed on the authority of resolutions of parliament until some security was furnished to the creditors that those whom they were to trust should have a permanent existence. This argument would have gone a great way, and was capable of an answer; since the money might have been borrowed on the authority of

and which Mr. Brodie has published in the appendix to his third volume, though, with an inadvertence of which he is seldom guilty, overlooking its date and purport. This, however, is of itself sufficient to display the inaccurate character of Clarendon's History; for I can scarcely ascribe the present incorrectness to design. There are, indeed, so many mistakes as to dates and other matters in Clarendon's account of this plot, that, setting aside his manifest disposition to suppress the truth, we can place not the least reliance on his memory as to those points which we may not be well able to bring to a test.

[a] Journals; Parliamentary Hist. 784; May, 67; Clarendon. According to Mrs. Hutchinson, p. 97, this bill originated with Mr. Pierpoint. If we should draw any inference from the Journals, sir John Colepepper seems to have been the most prominent of its supporters. Mr. Hyde and lord Falkland were also managers of the conference with the lords. But in sir Ralph Verney's manuscript notes I find Mr. Whitelock mentioned as being ordered by the house to prepare the bill; which seems to imply that he had moved it, or at least been very forward in it. Yet all these were moderate men.

the whole legislature. But the chief motive, unquestionably, was a just apprehension of the king's intention to overthrow the parliament, and of personal danger to those who had stood most forward from his resentment after a dissolution. His ready acquiescence in this bill, far more dangerous than any of those at which he demurred, can only be ascribed to his own shame and the queen's consternation at the discovery of the late plot: and thus we trace again the calamities of Charles to their two great sources; his want of judgment in affairs, and of good faith towards his people.

Innovations meditated in the church.

The parliament had met with as ardent and just an indignation against ecclesiastical as temporal grievances. The tyranny, the folly, and rashness of Charles's bishops were still greater than his own. It was evidently an indispensable duty to reduce the overbearing ascendancy of that order which had rendered the nation, in regard to spiritual dominion, a great loser by the Reformation. They had been so blindly infatuated as, even in the year 1640, amidst all the perils of the times, to fill up the measure of public wrath by enacting a series of canons in convocation. These enjoined, or at least recommended, some of the modern innovations, which, though many excellent men had been persecuted for want of compliance with them, had not got the sanction of authority. They imposed an oath on the clergy, commonly called the "et cætera oath," binding them to attempt no alteration "in the government of the church by bishops, deans, archdeacons, &c." This oath was by the same authority enjoined to such of the laity as held ecclesiastical offices.[b] The king, however, on the petition of the council of peers at York, directed it not to be taken. The house of commons rescinded these canons, with some degree of excess on the other side; not only denying the right of convocation to bind the clergy, which had certainly been exercised in all periods, but actually impeaching the bishops for a high misdemeanour on that account.[c] The lords, in the month of March, appointed a committee

[b] Neal, p. 632, has printed these canons imperfectly. They may be found at length in Nalson, i. 542.

[c] Clarendon; Parl. Hist. 678, 896; Neal, 647, 720 These votes as to the canons, however were carried, *nem. con.* Journals, 16th Dec. 1640

of ten earls, ten bishops, and ten barons, to report upon the innovations lately brought into the church. Of this committee Williams was chairman. But the spirit which now possessed the commons was not to be exorcised by the sacrifice of Laud and Wren, or even by such inconsiderable alterations as the moderate bishops were ready to suggest.[d]

There had always existed a party, though by no means coextensive with that bearing the general name of puritan, who retained an insuperable aversion to the whole scheme of episcopal discipline, as inconsistent with the ecclesiastical parity they believed to be enjoined by the apostles. It is not easy to determine what proportion these bore to the community. They were certainly at the opening of the parliament by far the less numerous, though an active and increasing party. Few of the house of commons, according to Clarendon and the best contemporary writers, looked to a destruction of the existing hierarchy.[e] The more plausible scheme was one which had the sanction of Usher's learned judgment, and which Williams was said to favour, for what was called a moderate episcopacy; wherein the bishop, reduced to a sort of president of his college of presbyters, and differing from them only in rank, not in order (gradu, non ordine), should act, whether in ordination or jurisdiction, by their concurrence.[f] This intermediate form of church-government would probably have contented the popular leaders of the commons, except two or three, and have proved acceptable to the nation. But it was hardly less offensive to the Scottish presbyterians, intolerant of the smallest deviation from their own model, than to the high-church episcopalians; and the necessity of humouring that proud and prejudiced race of people.

[d] Neal, 709. Laud and Wren were both impeached Dec. 18; the latter entirely for introducing superstitions. Parl. Hist. 861. He lay in the Tower till 1659.

[e] Neal says that the major part of the parliamentarians at the beginning of the war were for moderated episcopacy (ii. 4), and asserts the same in another place (i. 715) of the puritans, in contradiction of Rapin. "How this will go," says Baillie, in April, 1641, "the Lord knows; all are for the creating of a kind of presbytery, and for bringing down the bishops, in all things spiritual and temporal, so low as can be with any subsistence; but their utter abolition, which is the only aim of the most godly, is the knot of the question." i. 245.

[f] Neal, 666, 672, 713; Collier, 805; Baxter's Life, p. 62. The ministers' petition, as it was called, presented Jan. 23, 1641, with the signatures of 700 beneficed clergymen, went to this extent of reformation. Neal, 679.

who began already to show that an alteration in the church of England would be their stipulated condition for any assistance they might afford to the popular party, ed the majority of the house of commons to give more countenance than they sincerely intended to a bill preferred by what was then called the root-and-branch party, for the entire abolition of episcopacy. This party, composed chiefly of presbyterians, but with no small admixture of other sectaries, predominated in the city of London. At the instigation of the Scots commissioners, a petition against episcopal government, with 15,000 signatures, was presented early in the session (Dec. 11, 1640), and received so favourably as to startle those who bore a good affection to the church.[g] This gave rise to the first difference that was expressed in parliament: Digby speaking warmly against the reference of this petition to a committee, and Falkland, though strenuous for reducing the prelates' authority, showing much reluctance to abolish their order.[h] A bill was, however, brought in by sir Edward Dering, an honest but not very enlightened or consistent man, for the utter extirpation of episcopacy, and its second reading carried on a division by 139 to 108.[i] This, no doubt, seems to show the anti-episcopal party to have been stronger than Clarendon admits. Yet I suspect that the greater part of those who voted for it did not intend more than to intimidate the bishops. Petitions, very numerously signed, for the maintenance of episcopal government, were presented from several counties;[k] nor

g Parl. Hist. 673.; Clarendon, i. 356; Baillie's Letters, 218, &c. Though sanguine as to the progress of his sect, he admits that it was very difficult to pluck up episcopacy by the roots; for this reason they did not wish the house to give a speedy answer to the city petition: p. 241. It was carried by 36 or 37 voices, he says, to refer it to the committee of religion: p. 245. No division appears on the Journals.

The whole influence of the Scots commissioners was directed to this object; as not only Baillie's Letters, but those of Johnstone of Wariston (Dalrymple's Memorials of James and Charles I., ii. 114, &c.), show. Besides their extreme bigotry, which was the predominant motive, they had a better apology for interfering with church-government in England, with which the archbishop had furnished them; it was the only sure means of preserving their own.

h Rushworth; Nalson.

i Parl. Hist. 814, 822, 828. Clarendon tells us that, being chairman of the committee to whom this bill was referred, he gave it so much interruption, that no progress could be made before the adjournment. The house came, however, to a resolution, that the taking away the offices of archbishops, bishops, chancellors, and commissaries out of this church and kingdom, should be one clause of the bill. June 12. Commons' Journals.

k Lord Hertford presented one to the

is it, I think, possible to doubt that the nation sought only the abridgment of that coercive jurisdiction and temporal power by which the bishops had forfeited the reverence due to their function, as well as that absolute authority over presbyters, which could not be reconciled to the customs of the primitive church.[m] This was the object both of the act abolishing the high commission, which by the largeness of its expressions seemed to take away all coercive jurisdiction from the ecclesiastical courts, and of that for depriving the bishops of their suffrages among the peers; which, after being once rejected by a large majority of the lords, in June, 1641, passed into a law in the month of February following, and was the latest concession that the king made before his final appeal to arms.[n]

lords, from Somersetshire, signed by 14,350 freeholders and inhabitants. Nalson, ii. 727. The Cheshire petition, for preserving the Common Prayer, was signed by near 10,000 hands. Id. 758. I have a collection of those petitions now before me, printed in 1642, from thirteen English and five Welsh counties, and all very numerously signed. In almost every instance, I observe, they thank the parliament for putting a check to innovations and abuses, while they deprecate the abolition of episcopacy and the liturgy. Thus it seems that the presbyterians were very far from having the nation on their side. The following extract from the Somersetshire petition is a good sample of the general tone: "For the present government of the church we are most thankful to God, believing it in our hearts to be the most pious and the wisest that any people or kingdom upon earth hath been withal since the apostles' days; though we may not deny but, through the frailty of men and corruption of times, some things of ill consequence, and other needless, are stolen or thrust into it; which we heartily wish may be reformed, and the church restored to its former purity. And, to the end it may be the better preserved from present and future innovation, we wish the wittingly and maliciously guilty, of what condition soever they be, whether bishops or inferior clergy, may receive condign punishment. But, for the miscarriage of governors, to destroy the government, we trust it shall never enter into the hearts of this wise and honourable assembly."

[m] The house came to a vote on July 17, according to Whitelock, p. 46, in favour of Usher's scheme, that each county should be a diocese, and that there should be a governing college or presbytery, consisting of twelve, under the presidency of a bishop: sir E. Dering spoke in favour of this, though his own bill went much farther. Nalson, ii. 294; Neal, 703. I cannot find the vote in the Journals; it passed, therefore, I suppose in the committee, and was not reported to the house.

[n] Parl. Hist. 774, 794, 817, 910, 1087. The lords had previously come to resolutions that bishops should sit in the house of lords, but not in the privy council, nor be in any commission of the peace. Id. 814.

The king was very unwilling to give his consent to the bill excluding the bishops from parliament, and was, of course, dissuaded by Hyde from doing so. He was then at Newmarket, on his way to the north, and had nothing but war in his head. The queen, however, and sir John Colepepper, prevailed on him to consent. Clarendon, History, ii. 247 (1826); Life, 51. The queen could not be expected to have much tenderness for a protestant episcopacy; and it is to be said in favour of Colepepper's advice, who was pretty indifferent in ecclesiastical matters, that the bishops had rendered themselves odious to many of those

This was hardly, perhaps, a greater alteration of the established constitution than had resulted from the suppression of the monasteries under Henry; when, by the fall of the mitred abbots, the secular peers acquired a preponderance in number over the spiritual, which they had not previously enjoyed. It was supported by several persons, especially lord Falkland, by no means inclined to subvert the episcopal discipline; whether from a hope to compromise better with the opposite party by this concession, or from a sincere belief that the bishops might be kept better to the duties of their function by excluding them from civil power. Considered generally, it may be reckoned a doubtful question in the theory of our government whether the mixture of this ecclesiastical aristocracy with the house of lords is advantageous or otherwise to the public interests, or to those of religion. Their great revenues, and the precedence allotted them, seem naturally to place them on this level; and the general property of the clergy, less protected than that of other classes against the cupidity of an administration or a faction, may perhaps require this peculiar security. In fact, the disposition of the English to honour the ministers of the church, as well as to respect the ancient institutions of their country, has usually been so powerful, that the question would hardly have been esteemed dubious if the bishops themselves (I speak of course with such limitations as the nature of the case requires) had

who wished well to the royal cause. See the very remarkable conversation of Hyde with sir Edward Verney, who was killed at the battle of Edgehill, where the latter declares his reluctance to fight for the bishops, whose quarrel he took it to be, though bound by gratitude not to desert the king. Clarendon's Life, p. 68.

This author represents lord Falkland as having been misled by Hampden to take an unexpected part in favour of the first bill for excluding the bishops from parliament. "The house was so marvellously delighted to see the two inseparable friends divided in so important a point that they could not contain from a kind of rejoicing; and the more because they saw Mr. Hyde was much surprised with the contradiction, as in truth he was, having never discovered the least inclination in the other towards such a compliance:" i. 413. There is, however, an earlier speech of Falkland in print against the London petition; wherein, while objecting to the abolition of the order, he intimates his willingness to take away their votes in parliament, with all other temporal authority. Speeches of the Happy Parliament, p. 188 (published in 1641). Johnstone of Wariston says there were but four or five votes against taking away civil places and seats in parliament from the bishops. Dalrymple's Memorials, ii. 116. But in the Journals of the commons, 10th March, 1640-1, it is said to be resolved, after a long and mature debate, that the legislative power of bishops is a hinderance to their function.

been at all times sufficiently studious to maintain a character of political independence, or even to conceal a spirit of servility, which the pernicious usage of continual translations from one see to another, borrowed, like many other parts of our ecclesiastical law, from the most corrupt period of the church of Rome, has had so manifest a tendency to engender.[o]

This spirit of ecclesiastical, rather than civil, democracy, was the first sign of the approaching storm that alarmed the Hertfords and Southamptons, the Hydes and Falklands. Attached to the venerable church of the English reformation, they were loth to see the rashness of some prelates avenged by her subversion, or a few recent innovations repressed by incomparably more essential changes. Full of regard for established law, and disliking the puritan bitterness, aggravated as it was by long persecution,[p] they revolted from the indecent devastation committed in churches by the populace, and from the insults which now fell on the conforming ministers. The lords early distinguished their temper as to those points by an order on the 16th of January for the performance of divine service according to law, in consequence of the tumults that had been caused by the heated puritans under pretence of abolishing innovations. Little regard was shown to this order;[q] but it does not appear that the commons went farther on the opposite side than to direct some ceremonial novelties to be discontinued, and to empower one of their members, sr Robert Harley, to take away all pictures, crosses, and superstitious figures within churches or without.[r] But this order, like many of their other acts, was a manifest encroachment on the executive power of the crown.[s]

[1827.]

[o] "The higher house," says Baillie, "have made an order, which was read in the churches, that none presume of their own head to alter any customs established by law: this procured ordinance does not discourage any one." P. 237. Some rioters, however, who had pulled down rails about the altar, &c., were committed by order of the lords in June. Nalson, ii. 575.

[p] Parl. Hist. 868. By the hands of this zealous knight fell the beautiful crosses at Charing and Cheap, to the lasting regret of all faithful lovers of antiquities and architecture.

[q] Parl. Hist. 907. Commons' Journals, Sept. 1, 1641. It was carried at the time, on a division, by 55 to 37, that the committee "should propound an addition to this order for preventing all contempt and abuse of the Book of Common Prayer and all tumultuous disorders that might arise in the church thereupon." This is a proof that the church party were sometimes victorious in the house. But they did not long retain this casual advantage. For, the lords having sent

It seems to have been about the time of the summer recess, during the king's absence in Scotland, that the apprehension of changes in church and state, far beyond what had been dreamed of at the opening of parliament, led to a final schism in the constitutional party.[s] Charles, by abandoning his former advisers, and yielding, with just as much reluctance as displayed the value of the concession, to a series of laws that abridged his prerogative, had recovered a good deal of the affection and confidence of some, and gained from others that sympathy which is seldom withheld from undeserving princes in their humiliation. Though the ill-timed death of the earl of Bedford in May had partly disappointed an intended arrangement for bringing the popular leaders into office, yet the appointments of Essex, Holland, Say, and St. John from that party, were apparently pledges of the king's willingness to select his advisers from their ranks; whatever cause there might be to suspect that their real influence over him would be too inconsiderable.[t] Those who were still

Schism in the constitutional party.

down a copy of their order of 16th January above mentioned, requesting the commons' concurrence, they resolved, Sept. 9, "that the house do not consent to this order; it being thought unreasonable at this time to urge the severe execution of the said laws." They contented themselves with "expecting that the commons of this realm do, in the mean time, quietly attend the reformation intended, without any tumultuous disturbance of the worship of God and peace of the realm." See Nalson, ii. 484.

[s] May, p. 75. See this passage, which is very judicious. The disunion, however, had in some measure begun not long after the meeting of parliament; the court wanted, in December 1640, to have given the treasurer's staff to Hertford, whose brother was created a peer by the title of Lord Seymour. Bedford was the favourite with the commons for the same office, and would doubtless have been a fitter man at the time, notwithstanding the other's eminent virtues. Sidney Letters, ii. 605, 606. See also what Baillie says of the introduction of seven lords, "all commonwealth's men," into the council, though, as generally happens, he is soon discontented with some of them. P. 246, 247. There was even some jealousy of Say, as favouring Strafford.

[t] Whitelock, p. 46. Bedford was to have been lord treasurer, with Pym whom he had brought into parliament for Tavistock, as his chancellor of the exchequer; Hollis secretary of state. Hampden is said, but not perhaps on good authority, to have sought the office of governor to the prince of Wales; which Hume, not very candidly, brings as a proof of his ambition. It seems probable that, if Charles had at that time (May 1641) carried these plans into execution, and ceased to listen to the queen, or to those persons about his bedchamber who were perpetually leading him astray, he would have escaped the exorbitant demands which were afterwards made upon him, and even saved his favourite episcopacy. But, after the death of the earl of Bedford, who had not been hostile to the church, there was no man of rank in that party whom he liked to trust; Northumberland having acted, as he thought, very ungratefully, Say being a known enemy to episcopacy, and Essex, though of the highest honour not being of a capacity to retain much influence over the leaders of the other

excluded, and who distrusted the king's intentions as well towards themselves as the public cause, of whom Pym and Hampden, with the assistance of St. John, though actually solicitor-general, were the chief, found no better means of keeping alive the animosity that was beginning to subside, than by framing the Remonstrance on the state of the kingdom, presented to the king in November, 1641. This being a recapitulation of all the grievances and misgovernment that had existed since his accession, which his acquiescence in so many measures of redress ought, according to the common courtesy due to sovereigns, to have cancelled, was hardly capable of answering any other purpose than that of reanimating discontents almost appeased, and guarding the people against the confidence they were beginning to place in the king's sincerity. The promoters of it might also hope, from Charles's proud and hasty temper, that he would reply in such a tone as would more exasperate the commons. But he had begun to use the advice of judicious men, Falkland, Hyde, and Colepepper, and reined in his natural violence so as to give his enemies no advantage over him.

Remonstrance of November, 1641.

The jealousy which nations ought never to lay aside was especially required towards Charles, whose love of arbitrary dominion was much better proved than his sincerity in relinquishing it. But if he were intended to reign at all, and to reign with any portion either of the prerogatives of an English king, or the respect claimed by every sovereign, the Remonstrance of the commons could but prolong an irritation incompatible with public tranquillity. It admits, indeed, of no question, that the schemes of Pym, Hampden, and St. John, already tended to restrain the king's personal exercise of any effective power, from a sincere persuasion that no confidence could ever be placed in him, though not to abolish the monarchy, or probably to abridge in the same degree the rights of his successor. Their Remon-

house. Clarendon insinuates that, even as late as March, 1642, the principal patriots, with a few exceptions, would have been content with coming themselves into power under the king, and on this condition would have left his remaining prerogative untouched (ii. 326). But it seems more probable that, after the accusation of the five members, no measure of this kind would have been of any service to Charles.

strance was put forward to stem the returning tide of loyalty, which not only threatened to obstruct the further progress of their endeavours, but, as they would allege, might, by gaining strength, wash away some at least of the bulwarks that had been so recently constructed for the preservation of liberty. It was carried in a full house by the small majority of 159 to 148.[u] So much was it deemed a trial of strength, that Cromwell declared after the division that, had the question been lost, he would have sold his estate, and retired to America.

It may be thought rather surprising that, with a house

[u] Commons' Journals, 22nd November. On a second division the same night, whether the Remonstrance should be printed, the popular side lost it by 124 to 101. But on the 15th December the printing was carried by 135 to 83. Several divisions on important subjects about this time show that the royalist minority was very formidable. But the attendance, especially on that side, seems to have been irregular; and, in general, when we consider the immense importance of these debates, we are surprised to find the house so deficient in numbers as many divisions show it to have been. Clarendon frequently complains of the supineness of his party; a fault invariably imputed to their friends by the zealous supporters of established authority, who forget that sluggish, lukewarm, and thoughtless tempers must always exist, and that such will naturally belong to their side. I find in the short pencil notes taken by sir Ralph Verney, with a copy of which I have been favoured by Mr. Serjeant D'Oyly, the following entry on the 7th of August, before the king's journey to Scotland:—"A remonstrance to be made how we found the kingdom and the church; and how the state of it now stands." This is not adverted to in Nalson nor in the journals at this time. But Clarendon says, in a suppressed passage, vol. ii. Append. 591, that "at the beginning of the parliament, or shortly after, when all men were inflamed with the pressures and illegalities which had been exercised upon them, a committee was appointed to prepare a remonstrance of the state of the kingdom, to be presented to his majesty, in which the several grievances might be recited; which committee had never brought any report to the house; most men conceiving, and very reasonably, that the quick and effectual progress his majesty made for the reparation of those grievances, and prevention of the like for the future, had rendered that work needless. But as soon as the intelligence came of his majesty being on his way from Scotland towards London, that committee was, with great earnestness and importunity, called upon to bring in the draft of such remonstrance," &c. I find a slight notice of this origin of the Remonstrance in the Journals, Nov. 17, 1640.

In another place, also suppressed in the common editions, Clarendon says,—"This debate held many hours, in which the framers and contrivers of the declaration said very little, or answered any reasons that were alleged to the contrary; the only end of passing it, which was to incline the people to sedition, being a reason not to be given; but called still for the question, presuming their number, if not their reason, would serve to carry it; and after two in the morning (for so long the debate continued, if that can be called a debate when those only of one opinion argued), &c., it was put to the question." What a strange memory this author had! I have now before me sir Ralph Verney's MS. note of the debate, whence it appears that Pym, Hampden, Hollis, Glyn, and Maynard spoke in favour of the Remonstrance; nay, as far as these brief memoranda go, Hyde himself seems not to have warmly opposed it.

of commons so nearly balanced as they appear on this vote, the king should have new demands that annihilated his authority made upon him, and have found a greater majority than had voted the Remonstrance ready to oppose him by arms; especially as that paper contained little but what was true, and might rather be censured as an ill-timed provocation than an encroachment on the constitutional prerogative. But there were circumstances, both of infelicity and misconduct, which aggravated that distrust whereon every measure hostile to him was grounded. His imprudent connivance at popery, and the far more reprehensible encouragement given to it by his court, had sunk deep in the hearts of his people. His ill-wishers knew how to irritate the characteristic sensibility of the English on this topic. The queen, unpopular on the score of her imputed arbitrary counsels, was odious as a maintainer of idolatry.[x] The lenity shown to convicted popish priests, who, though liable to capital punishment, had been suffered to escape with sometimes a very short imprisonment, was naturally (according to the maxims of those times) treated as a grievance by the commons, who petitioned for the execution of one Goodman and others in similar circumstances, perhaps in the hope that the king would attempt to shelter them. But he dexterously left it to the house whether they should die or not; and none of them actually suffered.[y] Ru-

Suspicions of the king's sincerity.

[x] The letters of sir Edward Nicholas, published as a supplement to Evelyn's Diary, show how generally the apprehensions of popish influence were entertained. It is well for superficial pretenders to lay these on calumny and misrepresentation; but such as have read our historical documents know that the royalists were almost as jealous of the king in this respect as the puritans. See what Nicholas says to the king himself, p. 22, 25, 29. Indeed he gives several hints to a discerning reader that he was not satisfied with the soundness of the king's intentions, especially as to O'Neale's tampering with the army. p. 77. Nicholas, however, became afterwards a very decided supporter of the royal cause; and in the council at Oxford, just before the treaty of Uxbridge, was the only one who voted according to the king's wish, not to give the members at Westminster the appellation of a parliament: p. 90.

[y] The king's speech about Goodman, Baillie tells us, gave great satisfaction to all; "with *much humming* was it received." P. 240. Goodman petitioned the house that he might be executed rather than become the occasion of differences between the king and parliament. This was earlier in time, and at least equal in generosity, to lord Strafford's famous letter; or perhaps rather more so, since, though it turned out otherwise, he had greater reason to expect that he should be taken at his word. It is remarkable that the king says, in his answer to the commons, that no priest had been executed merely for religion, either by his father or Elizabeth; which, though well meant, was quite untrue. Parl. Hist. 712; Butler, ii. 5.

mours of pretended conspiracies by the catholics were perpetually in circulation, and rather unworthily encouraged by the chiefs of the commons. More substantial motives for alarm appeared to arise from the obscure transaction in Scotland, commonly called the Incident, which looked so like a concerted design against the two great leaders of the constitutional party, Hamilton and Argyle, that it was not unnatural to anticipate something similar in England.[z] In the midst of these apprehensions, as if to justify every suspicion and every severity, burst out the Irish rebellion with its attendant massacre. Though nothing could be more unlikely in itself, or less supported by proof, than the king's connivance at this calamity, from which every man of common understanding could only expect, what actually resulted from it, a terrible aggravation of his difficulties, yet, with that distrustful temper of the English, and their jealous dread of popery, he was never able to conquer their suspicions that he had either instigated the rebellion, or was very little solicitous to suppress it; suspicions, indeed, to which, however ungrounded at this particular period, some circumstances that took place afterwards gave an apparent confirmation.[a]

It was, perhaps, hardly practicable for the king, had he given less real excuse for it than he did, to lull that disquietude which so many causes operated to excite. The most circumspect discretion of a prince in such a difficult posture cannot restrain the rashness of eager

[z] See what Clarendon says of the effect produced at Westminster by the Incident, in one of the suppressed passages. Vol. ii. Append. p. 575, edit. 1826.

[a] Nalson, ii. 788, 792, 804; Clarendon, ii. 84. The queen's behaviour had been extraordinarily imprudent from the very beginning. So early as Feb. 17, 1641, the French ambassador writes word,—"La reine d'Angleterre dit publiquement qu'il y a une trève arrestée pour trois ans entre la France et l'Espagne, et que ces deux couronnes vont unir leurs forces pour la défendre et pour venger les catholiques." Mazure, Hist. de la Révol. en 1688, ii. 419. She was very desirous to go to France, doubtless to interest her brother and the queen in the cause of royalty. Lord Holland, who seems to have been the medium between the parliamentary chiefs and the French court, signified how much this would be dreaded by the former; and Richelieu took care to keep her away of which she bitterly complained. This was in February. Her majesty's letter, which M. Mazure has been malicious enough to print verbatim, is a curious specimen of orthography. Id. p. 416. Her own party were equally averse to this step, which was chiefly the effect of cowardice; for Henrietta was by no means the high-spirited woman that some have fancied. It is well known that a few months afterwards she pretended to require the waters of Spa for her health; but was induced to give up her journey.

adherents, or silence the murmurs of a discontented court. Those nearest Charles's person, and who always possessed too much of his confidence, were notoriously and naturally averse to the recent changes. Their threatening but idle speeches, and impotent denunciations of resentment, conveyed with malignant exaggeration among the populace, provoked those tumultuous assemblages which afforded the king no bad pretext for withdrawing himself from a capital where his personal dignity was so little respected.[b] It is impossible however to deny that he gave by his own conduct no trifling reasons for suspicion, and last of all by the appointment of Lunsford to the government of the Tower; a choice for which, as it would never have been made from good motives, it was natural to seek the worst. But the single false step[c] which rendered his affairs irretrievable by

[b] Clarendon, ii. 81. This writer intimates that the Tower was looked upon by the court as a bridle upon the city.

[c] Nalson, ii. 810, and other writers, ascribe this accusation of lord Kimbolton in the peers, and of the five members, as they are commonly called, Pym, Hollis, Hampden, Haslerig, and Strode, to secret information obtained by the king in Scotland of their former intrigues with that nation. This is rendered in some measure probable by a part of the written charge preferred by the attorney-general before the house of lords, and by expressions that fell from the king; such as "it was a treason which they should all thank him for discovering." Clarendon, however, hardly hints at this; and gives at least a hasty reader to understand that the accusation was solely grounded on their parliamentary conduct. Probably he was aware that the act of oblivion passed last year afforded a sufficient legal defence to the charge of corresponding with the Scots in 1640. In my judgment they had an abundant justification in the eyes of their country for intrigues which, though legally treasonable, had been the means of overthrowing despotic power. The king and courtiers had been elated by the applause he received when he went into the city to dine with the lord-mayor on his return from Scotland; and Madame de Motteville says plainly that he determined to avail himself of it in order to seize the leaders in parliament. (i. 264.)

Nothing could be more irregular than the mode of Charles's proceedings in this case. He sent a message by the serjeant-at-arms to require of the speaker that five members should be given up to him on a charge of high treason; no magistrate's or councillor's warrant appeared; it was the king acting singly, without the intervention of the law. It is idle to allege, like Clarendon, that privilege of parliament does not extend to treason; the breach of privilege, and of all constitutional law, was in the mode of proceeding. In fact, the king was guided by bad private advice, and cared not to let any of his privy council know his intentions lest he should encounter opposition.

The following account of the king's coming to the house on this occasion is copied from the pencil notes of sir R. Verney. It has been already printed by Mr. Hatsell (Precedents, iv. 106), but with no great correctness. What sir R. V. says of the transactions of Jan. 3 is much the same as we read in the Journals. He thus proceeds:—"Tuesday, January 4, 1641 The five gentlemen which were to be accused came into the house, and there was information that they should be taken away by force. Upon this the house sent to the lord mayor, aldermen, and common council, to let them know

anything short of civil war, and placed all reconciliation at an insuperable distance, was his attempt to seize the five members within the walls of the house; an evident violation, not of common privilege, but of all security for the independent existence of parliament in the mode of its execution, and leading to a very natural though

how their privileges were likely to be broken and the city put into danger, and advised them to look to their security.

"Likewise some members were sent to the inns of court to let them know how they heard they were tampered withal to assist the king against them, and therefore they desired them not to come to Westminster.

"Then the house adjourned to one of the clock.

"As soon as the house met again it was moved, considering there was an intention to take these five members away by force, to avoid all tumult, let them be commanded to absent themselves; upon this the house gave them leave to absent themselves, but entered no order for it. And then the five gentlemen went out of the house.

"A little after the king came with all his guard, and all his pensioners, and two or three hundred soldiers and gentlemen. The king commanded the soldiers to stay in the hall, and sent us word he was at the door. The speaker was commanded to sit still with the mace lying before him, and then the king came to the door and took the palsgrave in with him, and commanded all that came with him upon their lives not to come in. So the doors were kept open, and the earl of Roxburgh stood within the door, leaning upon it. Then the king came upwards towards the chair with his hat off, and the speaker stepped out to meet him; then the king stepped up to his place, and stood upon the step, but sat not down in the chair.

"And after he had looked a great while he told us he would not break our privileges, but treason had no privilege; he came for those five gentlemen, for he expected obedience yesterday, and not an answer. Then he called Mr. Pym and Mr. Hollis by name, but no answer was made. Then he asked the speaker if they were here, or where they were? Upon this the speaker fell on his knees, and desired his excuse, for he was a servant to the house, and had neither eyes nor tongue to see or say anything but what they commanded him: then the king told him he thought his own eyes were as good as his, and then said his birds had flown, but he did expect the house should send them to him; and if they did not, he would seek them himself, for their treason was foul, and such a one as they would all thank him to discover: then he assured us they should have a fair trial; and so went out, pulling off his hat till he came to the door.

"Upon this the house did instantly resolve to adjourn till to-morrow at one of the clock, and in the interim they might consider what to do.

"Wednesday, 5th January, 1641.

"The house ordered a committee to sit at Guildhall in London, and all that would come had voices. This was to consider and advise how to right the house in point of privilege broken by the king's coming yesterday with a force to take members out of our house. They allowed the Irish committee to sit, but would meddle with no other business till this were ended; they acquainted the lords in a message with what they had done, and then they adjourned the house till Tuesday next."

The author of these memoranda in pencil, which extend, at intervals of time, from the meeting of the parliament to April, 1642, though mistaken by Mr. Hatsell for sir Edmund Verney, member for the county of Bucks, and killed at the battle of Edgehill, has been ascertained by my learned friend, Mr. Serjeant D'Oyly, to be his brother, sir Ralph, member for Aylesbury. He continued at Westminster, and took the covenant; but afterwards retired to France, and was disabled to sit by a vote of the house, Sept. 22, 1645.

perhaps mistaken surmise, that the charge itself of high treason made against these distinguished leaders, without communicating any of its grounds, had no other foundation than their parliamentary conduct. And we are in fact warranted by the authority of the queen herself to assert that their aim in this most secret enterprise was to strike terror into the parliament, and regain the power that had been wrested from their grasp.[d] It is unnecessary to dwell on a measure so well known, and which scarce any of the king's advocates have defended. The only material subject it affords for reflection is, how far the manifest hostility of Charles to the popular chiefs might justify them in rendering it harmless by wresting the sword out of his hands. No man doubtless has a right, for the sake only of his own security, to subvert his country's laws, or to plunge her into civil war. But Hampden, Hollis, and Pym might not absurdly consider the defence of English freedom bound up in their own, assailed as they were for its sake and by its enemies. It is observed by Clarendon that "Mr. Hampden was much altered after this accusation; his nature and courage seeming much fiercer than before." And it is certain that both he and Mr. Pym were not only most forward in all the proceedings which brought on the war, but among the most implacable opponents of all overtures towards reconciliation; so that, although, both dying in 1643, we cannot pronounce with absolute certainty as to their views, there can be little room to doubt that they would have adhered to the side of Cromwell and St. John, in the great separation of the parliamentary party.

The noble historian confesses that not Hampden alone, but the generality of those who were beginning to judge more favourably of the king, had their inclinations alienated by this fatal act of violence.[e] It is worthy of

[d] Mém. de Motteville, i. 264. Clarendon has hardly been ingenuous in throwing so much of the blame of this affair on lord Digby. Indeed, he insinuates in one place that the queen's apprehension of being impeached, with which some one in the confidence of the parliamentary leaders (either lord Holland or lady Carlisle) had inspired her, led to the scheme of anticipating them. (ii. 232.) It has been generally supposed that lady Carlisle gave the five members a hint to absent themselves The French ambassador, however, Montereuil, takes the credit to himself:—"J'avois prévenu mes amis, et ils s'étoient mis en sûreté." Mazure, p. 429. It is probable that he was in communication with that intriguing lady.

[e] P. 159, 160.

remark that each of the two most striking encroachments on the king's prerogative sprang directly from the suspicions roused of an intention to destroy their privileges: the bill perpetuating the parliament having been hastily passed on the discovery of Percy's and Jermyn's conspiracy, and the present attempt on the five members inducing the commons to insist peremptorily on vesting the command of the militia in persons of their own nomination; a security, indeed, at which they had been less openly aiming from the time of that conspiracy, and particularly of late.[f] Every one knows that this was the grand question upon which the quarrel finally rested; but it may be satisfactory to show, more precisely than our historians have generally done, what was meant by the power of

Question of the militia.

[f] The earliest proof that the commons gave of their intention to take the militia into their hands was immediately upon the discovery of Percy's plot, 5th May, 1641, when an order was made that the members of each county, &c., should meet to consider in what state the places for which they serve are in respect of arms and ammunition, and whether the deputy lieutenants and lord lieutenants are persons well affected to the religion and the public peace, and to present their names to the house, and who are the governors of forts and castles in their counties. Commons' Journals. Not long afterwards, or at least before the king's journey to Scotland, sir Arthur Haslerig, as Clarendon informs us, proposed a bill for settling the militia in such hands as they should nominate, which was seconded by St. John, and read once, "but with so universal a dislike, that it was never called upon a second time." Clarendon, i. 488. I can find nothing of this in the Journals, and believe it to be one of the anachronisms into which this author has fallen, in consequence of writing at a distance from authentic materials. The bill to which he alludes must, I conceive, be that brought in by Haslerig long after, 7th Dec. 1641, not, as he terms it, for settling the militia, but for making certain persons, leaving their names in blank, "lords general of all the forces within England and Wales, and lord admiral of England." The persons intended seem to have been Essex, Holland, and Northumberland. The commons had for some time planned to give the two former earls a supreme command over the trained bands north and south of Trent (Journals, Nov. 15 and 16), which was afterwards changed into the scheme of lord lieutenants of their own nomination for each county. The bill above mentioned having been once read, it was moved that it be rejected, which was negatived by 158 to 125. Commons' Journals, 7th Dec. Nalson, ii. 719, has made a mistake about these numbers. The bill, however, was laid aside, a new plan having been devised. It was ordered, 31st Dec. 1641, "that the house be resolved into a committee on Monday next (Jan. 3), to take into consideration the militia of the kingdom." That Monday, Jan. 3, was the famous day of the king's message about the five members; and on Jan. 13, a declaration for putting the kingdom in a state of defence passed the commons, by which all officers, magistrates, &c., were enjoined to take care that no soldiers be raised, nor any castles or arms given up, *without his majesty's pleasure signified by both houses of parliament.* Commons' Journals. Parl. Hist. 1035. The lords at the time refused to concur in this declaration, which was afterwards changed into the ordinance for the militia; but 32 peers signed a protest (id. 1049), and the house not many days afterwards came to an opposite vote, joining with the commons in their demand of the militia. Id. 1072, 1091.

the militia, and what was the exact ground of dispute in this respect between Charles I. and his parliament.

Historical sketch of the military force in England.

The military force which our ancient constitution had placed in the hands of its chief magistrate and those deriving authority from him, may be classed under two descriptions; one principally designed to maintain the king's and the nation's rights abroad, the other to protect them at home from attack or disturbance. The first comprehends the tenures by knight's service, which, according to the constant principles of a feudal monarchy, bound the owners of lands, thus held from the crown, to attend the king in war, within or without the realm, mounted and armed, during the regular term of service. Their own vassals were obliged by the same law to accompany them. But the feudal service was limited to forty days, beyond which time they could be retained only by their own consent, and at the king's expense. The military tenants were frequently called upon in expeditions against Scotland, and last of all in that of 1640; but the short duration of their legal service rendered it, of course, nearly useless in continental warfare. Even when they formed the battle, or line of heavy-armed cavalry, it was necessary to complete the army by recruits of foot-soldiers, whom feudal tenure did not regularly supply, and whose importance was soon made sensible by their skill in our national weapon, the bow. What was the extent of the king's lawful prerogative for two centuries or more after the Conquest as to compelling any of his subjects to serve him in foreign war, independently of the obligations of tenure, is a question scarcely to be answered; since, knowing so imperfectly the boundaries of constitutional law in that period, we have little to guide us but precedents; and precedents, in such times, are apt to be much more records of power than of right. We find certainly several instances under Edward I. and Edward II., sometimes of proclamations to the sheriffs, directing them to notify to all persons of sufficient estate that they must hold themselves ready to attend the king whenever he should call on them, sometimes of commissions to particular persons in different counties, who are enjoined to choose and array a competent number of

horse and foot for the king's service.[g] But these levies being, of course, vexatious to the people, and contrary at least to the spirit of those immunities which, under the shadow of the great charter, they were entitled to enjoy, Edward III., on the petition of his first parliament, who judged that such compulsory service either was or ought to be rendered illegal, passed a remarkable act, with the simple brevity of those times: "That no man from henceforth should be charged to arm himself, otherwise than he was wont in the time of his progenitors, the kings of England; and that no man be compelled to go out of his shire, but where necessity requireth, and sudden coming of strange enemies into the realm; and then it shall be done as hath been used in times past for the defence of the realm."[h]

This statute, by no means of inconsiderable importance in our constitutional history, put a stop for some ages to these arbitrary conscriptions. But Edward had recourse to another means of levying men without his own cost, by calling on the counties and principal towns to furnish a certain number of troops. Against this the parliament provided a remedy by an act in the 25th year of his reign: "That no man shall be constrained to find men at arms, hoblers, nor archers, other than those who hold by such service, if it be not by common consent and grant in parliament." Both these statutes were recited and confirmed in the fourth year of Henry IV.[i]

The successful resistance thus made by parliament appears to have produced the discontinuance of compulsory levies for foreign warfare. Edward III. and his successors, in their long contention with France, resorted to the mode of recruiting by contracts with men of high rank or military estimation, whose influence was greater probably than that of the crown towards procuring voluntary enlistments. The pay of soldiers,

g Rymer, sub Edw. I. et II. passim. Thus, in 1297, a writ to the sheriff of Yorkshire directs him to make known to all, qui habent 20 libratas terræ et reditus per annum, tam illis qui non tenent de nobis in capite quam illis qui tenent, ut de equis et armis sibi provideant et se probarent indilatè; ita quod sint prompti et parati ad veniendum ad nos et eundum cum propriâ personâ nostrâ, pro defensione ipsorum et totius regni nostri prædicti, quandocunque pro ipsis duxerimus demandandum: ii. 864.

h Stat. 1 Edw. III. c. 5.

i 25 Edw. III. c. 8; 4 H. IV. c. 13.

which we find stipulated in such of those contracts as are extant, was extremely high; but it secured the service of a brave and vigorous yeomanry. Under the house of Tudor, in conformity to their more despotic scheme of government, the salutary enactments of former times came to be disregarded; Henry VIII. and Elizabeth sometimes compelling the counties to furnish soldiers: and the prerogative of pressing men for military service, even out of the kingdom, having not only become as much established as undisputed usage could make it, but acquiring no slight degree of sanction by an act passed under Philip and Mary, which, without repealing or adverting to the statutes of Edward III. and Henry IV., recognises, as it seems, the right of the crown to levy men for service in war, and imposes penalties on persons absenting themselves from musters commanded by the king's authority to be held for that purpose.[k] Clarendon, whose political heresies sprang in a great measure from his possessing but a very imperfect knowledge of our ancient constitution, speaks of the act that declared the pressing of soldiers illegal, though exactly following, even in its language, that of Edward III., as contrary to the usage and custom of all times.

It is scarcely perhaps necessary to observe that there had never been any regular army kept up in England. Henry VII. established the yeomen of the guard in 1485, solely for the defence of his person, and rather perhaps, even at that time, to be considered as the king's domestic servants than as soldiers. Their number was at first fifty, and seems never to have exceeded two hundred. A kind of regular troops, however, chiefly accustomed to the use of artillery, was maintained in the very few fortified places where it was thought necessary or practicable to keep up the show of defence; the Tower of London, Portsmouth, the castle of Dover, the fort of Tilbury, and, before the union of the crowns, Berwick and some other places on the Scottish border. I have

[k] 4 & 5 Philip and Mary, c. 3. The Harleian manuscripts are the best authority for the practice of pressing soldiers to serve in Ireland or elsewhere, and are full of instances. The Mouldys and Bullcalfs were in frequent requisition. See vols. 309, 1926, 2219, and others. Thanks to Humphrey Wanley's diligence, the analysis of these papers in the catalogue will save the inquirer the trouble of reading, or the mortification of finding he cannot read, the terrible scrawl in which they are generally written.

met with very little as to the nature of these garrisons. But their whole number must have been insignificant, and probably at no time equal to resist any serious attack.

We must take care not to confound this strictly military force, serving, whether by virtue of tenure or engagement, wheresoever it should be called, with that of a more domestic and defensive character to which alone the name of militia was usually applied. By the Anglo-Saxon laws, or rather by one of the primary and indispensable conditions of political society, every freeholder, if not every freeman, was bound to defend his country against hostile invasion. It appears that the alderman or earl, while those titles continued to imply the government of a county, was the proper commander of this militia. Henry II., in order to render it more effective in cases of emergency, and perhaps with a view to extend its service, enacted, by consent of parliament, that every freeman, according to the value of his estate or moveables, should hold himself constantly furnished with suitable arms and equipments.[m] By the statute of Winchester, in the 13th year of Edward I., these provisions were enforced and extended. Every man, between the ages of fifteen and sixty, was to be assessed, and sworn to keep armour according to the value of his lands and goods; for fifteen pounds and upwards in rent, or forty marks in goods, a hauberk, an iron breastplate, a sword, a knife, and a horse; for smaller property, less extensive arms. A view of this armour was to be taken twice in the year by constables chosen in every hundred.[n] These regulations appear by the context of the whole statute to have more immediate regard to the preservation of internal peace, by suppressing tumults and arresting robbers, than to the actual defence of the realm against hostile invasion; a danger not at that time very imminent. The sheriff, as chief conservator of public peace and minister of the law, had always possessed the right of summoning the posse comitatûs; that is, of calling on all the king's liege subjects within his jurisdiction for assistance, in case of any rebellion or tumultuous rising, or when bands of robbers infested the

[m] Wilkins's Leges Anglo-Saxonicæ, p. 333; Lyttleton's Henry II., iii. 354.
[n] Stat. 13 E. 1.

public ways, or when, as occurred very frequently, the execution of legal process was forcibly obstructed. It seems to have been the policy of that wise prince, to whom we are indebted for so many signal improvements in our law, to give a more effective and permanent energy to this power of the sheriff. The provisions, however, of the statute of Winchester, so far as they obliged every proprietor to possess suitable arms, were of course applicable to national defence. In seasons of public danger, threatening invasion from the side of Scotland or France, it became customary to issue commissions of array, empowering those to whom they were addressed to muster and train all men capable of bearing arms in the counties to which their commission extended, and hold them in readiness to defend the kingdom. The earliest of these commissions that I find in Rymer is of 1324, and the latest of 1557.

The obligation of keeping sufficient arms according to each man's estate was preserved by a statute of Philip and Mary, which made some changes in the rate and proportion as well as the kind of arms.[o] But these ancient provisions were abrogated by James in his first parliament.[p] The nation, become for ever secure from invasion on the quarter where the militia service had been most required, and freed from the other dangers which had menaced the throne of Elizabeth, gladly saw itself released from an expensive obligation. The government again may be presumed to have thought that weapons of offence were safer in its hands than in those of its subjects. Magazines of arms were formed in different places, and generally in each county:[q] but, if we may reason from the absence of documents, there was little regard to military array and preparation; save that the citizens of London mustered their trained bands on holidays, an institution that is said to have sprung out of a voluntary association, called the Artillery Company, formed in the reign of Henry VIII. for the encouragement of archery,

[o] 5 Philip and Mary, c. 2.

[p] 1 Jac. c. 25, § 46. An order of council in Dec. 1638, that every man having lands of inheritance to the clear yearly value of 200*l.* should be chargeable to furnish a light horseman, every one of 400*l.* estate to furnish a lance at the discretion of the lord-lieutenant, was unwarranted by any existing law, and must be reckoned among the violent stretches of prerogative at that time. Rushw. Abr. ii. 500.

[q] Rymer, xix. 310.

and acquiring a more respectable and martial character at the time of the Spanish Armada.[r]

The power of calling to arms, and mustering the population of each county, given in earlier times to the sheriff or justices of the peace, or to special commissioners of array, began to be entrusted, in the reign of Mary, to a new officer, entitled the lord lieutenant. This was usually a peer, or at least a gentleman of large estate within the county, whose office gave him the command of the militia, and rendered him the chief vicegerent of his sovereign, responsible for the maintenance of public order. This institution may be considered as a revival of the ancient local earldom; and it certainly took away from the sheriff a great part of the dignity and importance which he had acquired since the discontinuance of that office. Yet the lord lieutenant has so peculiarly military an authority, that it does not in any degree control the civil power of the sheriff as the executive minister of the law. In certain cases, such as a tumultuous obstruction of legal authority, each might be said to possess an equal power; the sheriff being still undoubtedly competent to call out the posse comitatûs in order to enforce obedience. Practically, however, in all serious circumstances, the lord lieutenant has always been reckoned the efficient and responsible guardian of public tranquillity.

From an attentive consideration of this sketch of our military law, it will strike the reader that the principal question to be determined was, whether, in time of peace, without pretext of danger of invasion, there were any legal authority that could direct the mustering and training to arms of the able-bodied men in each county, usually denominated the militia. If the power existed at all, it manifestly resided in the king. The notion that either or both houses of parliament, who possess no portion of executive authority, could take on themselves one of its most peculiar and important functions, was so preposterous that we can scarcely give credit to the sincerity of any reasonable person who advanced it. In the imminent peril of hostile invasion, in the case of intestine rebellion, there seems to be no room for doubt

[r] Grose's Military Antiquities, i. 150. The word artillery was used in that age for the long bow.

that the king, who could call on his subjects to bear arms for their country and laws, could oblige them to that necessary discipline and previous training, without which their service would be unavailing. It might also be urged that he was the proper judge of the danger. But that, in a season of undeniable tranquillity, he could withdraw his subjects from their necessary labours against their consent, even for the important end of keeping up the use of military discipline, is what, with our present sense of the limitations of royal power, it might be difficult to affirm. The precedents under Henry VIII. and Elizabeth were numerous; but not to mention that many, perhaps most, of these might come under the class of preparations against invasion, where the royal authority was not to be doubted, they could be no stronger than those other precedents for pressing and mustering soldiers, which had been declared illegal. There were at least so many points uncertain, and some wherein the prerogative was plainly deficient, such as the right of marching the militia out of their own counties, taken away, if it had before existed, by the act just passed against pressing soldiers, that the concurrence of the whole legislature seemed requisite to place so essential a matter as the public defence on a secure and permanent footing.[1]

Encroachments of the parliament.

The aim of the houses however in the bill for regulating the militia, presented to Charles in February, 1642, and his refusal to pass which led by rapid steps to the civil war, was not so much to remove those uncertainties by a general provision (for in effect they left them much as before), as to place the command of the sword in the hands of those they could control;—nominating in the bill the lords lieutenant of every county, who were to obey the orders of the two houses, and to be irremovable by the king for two years. No one can pretend that this was not an encroachment on his prerogative.[2] It can only

[1] Whitelock maintained, both on this occasion and at the treaty of Uxbridge, that the power of the militia resided in the king and two houses jointly: p. 55, 129. This, though not very well expressed, can only mean that it required an act of parliament to determine and regulate it.

[2] See the list of those recommended. Parl. Hist. 1083. Some of these were royalists: but, on the whole, three-fourths of the military force of England would

find a justification in the precarious condition, as the commons asserted it to be, of those liberties they had so recently obtained, in their just persuasion of the king's insincerity, and in the demonstrations he had already made of an intention to win back his authority at the sword's point.[u] But it is equitable, on the other hand, to observe that the commons had by no means greater reason to distrust the faith of Charles, than he had to anticipate fresh assaults from them on the power he had inherited, on the form of religion which alone he thought lawful, on the counsellors who had served him most faithfully, and on the nearest of his domestic ties. If the right of self-defence could be urged by parliament for this demand of the militia, must we not admit that a similar plea was equally valid for the king's refusal? However arbitrary and violent the previous government of Charles may have been, however disputable his sincerity at present, it is vain to deny that he had made the most valuable concessions, and such as had cost him very dear. He had torn away from his diadem what all monarchs would deem its choicest jewel—that high attribute of uncontrollable power, by which their flatterers have in all ages told them they resemble and represent the Divinity. He had seen those whose counsels he had best approved rewarded with exile or imprisonment, and had incurred the deep reproach of his own heart by the sacrifice of Strafford. He had just now given a reluctant assent to the extinction of one estate of parliament, by the bill excluding bishops from the house of peers. Even in this business of the militia he would have consented to nominate the persons recommended to him as lieutenants, by commissions revocable at his pleasure; or would have passed the bill rendering them irremovable for one year, provided they might receive their orders from himself and the two houses jointly.[x] It was not

have been in the hands of persons who, though men of rank and attached to the monarchy, had given Charles no reason to hope that they would decline to obey any order which the parliament might issue, however derogatory or displeasing to himself.

[u] "When this bill had been with much ado accepted, and first read, there were few men who imagined it would ever receive further countenance; but now there were very few who did not believe it to be a very necessary provision for the peace and safety of the kingdom. So great an impression had the late proceedings made upon them, that with little opposition it passed the commons, and was sent up to the lords." Clarend. ii. 180.

[x] Clarendon, ii. 375; Parl. Hist. 1077, 1106, &c. It may be added, that the

unreasonable for the king to pause at the critical moment which was to make all future denial nugatory, and inquire whether the prevailing majority designed to leave him what they had not taken away. But he was not long kept in uncertainty upon this score. The nineteen propositions tendered to him at York in the beginning of June, and founded upon addresses and declarations of a considerably earlier date,[y] went to abrogate in spirit the whole existing constitution, and were in truth so far beyond what the king could be expected to grant, that terms more intolerable were scarcely proposed to him in his greatest difficulties, not at Uxbridge, nor at Newcastle, nor even at Newport.

Nineteen propositions.

These famous propositions import that the privy council and officers of state should be approved by parliament, and take such an oath as the two houses should prescribe; that during the intervals of parliament no vacancy in the council should be supplied without the assent of the major part, subject to the future sanction of the two houses; that the education and marriages of the king's children should be under parliamentary control; the votes of popish peers be taken away; the church government and liturgy be reformed as both houses should advise; the militia and all fortified places put in such hands as parliament should approve; finally, that the king should pass a bill for restraining all peers

militia bill, as originally tendered to the king by the two houses, was ushered in by a preamble asserting that there had been a most dangerous and desperate design on the house of commons, the effect of the bloody counsels of the papists and other ill-affected persons, who had already raised a rebellion in Ireland. Clar. p. 336. Surely he could not have passed this, especially the last allusion, without recording his own absolute dishonour: but it must be admitted, that on the king's objection they omitted this preamble, and also materially limited the powers of the lords lieutenant to be appointed under the bill.

[y] A declaration of the grievances of the kingdom, and the remedies proposed, dated April 1, may be found in the Parliamentary History, p. 1155. But that work does not notice that it had passed the commons on Feb. 19, before the king had begun to move towards the north. Commons' Journals. It seems not to have pleased the house of lords, who postponed its consideration, and was much more grievous to the king than the nineteen propositions themselves. One proposal was to remove all papists from about the queen; that is, to deprive her of the exercise of her religion, guaranteed by her marriage contract. To this objection Pym replied that the house of commons had only to consider the law of God and the law of the land; that they must resist idolatry, lest they incur the divine wrath, and must see the laws of this kingdom executed; that the public faith is less than that they owe to God, against which no contract can oblige neither can any bind us against the law of the kingdom. Parl. Hist. 1162.

to be made in future from sitting in parliament, unless they be admitted with the consent of both houses. A few more laudable provisions, such as that the judges should hold their offices during good behaviour, which the king had long since promised,[2] were mixed up with these strange demands. Even had the king complied with such unconstitutional requisitions, there was one behind which, though they had not advanced it on this occasion, was not likely to be forgotten. It had been asserted by the house of commons in their last remonstrance, that, on a right construction of the old coronation oath, the king was bound to assent to all bills which the two houses of parliament should offer.[3] It has been said by some that this was actually the constitution of Scotland, where the crown possessed a counterbalancing influence; but such a doctrine was in this country as repugnant to the whole history of our laws as it was incompatible with the subsistence of the monarchy in anything more than a nominal pre-eminence.

Discussion of the respective claims of the two parties to support.

In weighing the merits of this great contest, in judging whether a thoroughly upright and enlightened man would rather have listed under the royal or parliamentary standard, there are two political postulates, the concession of which we may require: one, that civil war is such a calamity as nothing but the most indispensable necessity can authorise any party to bring on; the other, that the mixed government of England by king, lords, and commons, was to be maintained in preference to any other form of

[2] Parl. Hist. 702.

[3] Clarendon, p. 452. Upon this passage in the remonstrance a division took place, when it was carried by 103 to 61. Parl. Hist. 1302. The words in the old form of coronation oath, as preserved in a bill of parliament under Henry IV., concerning which this grammatico-political contention arose, are the following:—

Concedis justas leges et consuetudines esse tenendas, et promittis per te eas esse protegendas, et ad honorem Dei corroborandas, *quas vulgus elegerit*, secundum vires tuas?" It was maintained by one side that *elegerit* should be construed in the future tense, while the other contended for the preterperfect. But even if the former were right, as to the point of Latin construction, though consuetudines seems naturally to imply a past tense, I should by no means admit the strange inference that the king was bound to sanction all laws proposed to him. His own assent is involved in the expression, "quas vulgus elegerit," which was introduced, on the hypothesis of the word being in the future tense, as a security against his legislation without consent of the people in parliament. The English coronation oath which Charles had taken excludes the future: Sir, will you grant to hold and keep the laws and rightful customs, *which the commonalty of this your kingdom have?*

polity. The first of these can hardly be disputed; and though the denial of the second would certainly involve no absurdity, yet it may justly be assumed where both parties avowed their adherence to it as a common principle. Such as prefer a despotic or a republican form of government will generally, without much further inquiry, have made their election between Charles I. and the parliament. We do not argue from the creed of the English constitution to those who have abandoned its communion.

There was so much in the conduct and circumstances of both parties in the year 1642 to excite disapprobation and distrust, that a wise and good man could hardly unite cordially with either of them. On the one hand he would entertain little doubt of the king's desire to overthrow by force or stratagem whatever had been effected in parliament, and to establish a plenary despotism; his arbitrary temper, his known principles of government, the natural sense of wounded pride and honour, the instigations of a haughty woman, the solicitations of favourites, the promises of ambitious men, were all at work to render his new position as a constitutional sovereign, even if unaccompanied by fresh indignities and encroachments, too grievous and mortifying to be endured. He had already tampered in a conspiracy to overawe, if not to disperse, the parliament: he had probably obtained large promises, though very little to be trusted, from several of the presbyterian leaders in Scotland during his residence there in the summer of 1641: he had attempted to recover his ascendancy by a sudden blow in the affair of the five members; he had sent the queen out of England, furnished with the crown jewels, for no other probable end than to raise men and procure arms in foreign countries:[b] he was now about to take the field with an army, composed in part of young gentlemen disdainful of a puritan faction that censured their licence, and of those soldiers of fortune, reckless of public principle, and averse to civil control, whom

Faults of both.

[b] See what is said as to this by P. Orleans, iii. 87, and by Madame de Motteville, i. 26. Her intended journey to Spa in July, 1641, which was given up on the remonstrance of parliament, is highly suspicious. The house, it appears, had received even then information that the crown jewels were to be carried away Nalson, ii. 391.

the war in Germany had trained; in part of the catholics, a wealthy and active body, devoted to the crown, from which alone they had experienced justice or humanity, and from whose favour and gratitude they now expected the most splendid returns. Upon neither of these parties could a lover of his country and her liberties look without alarm; and though he might derive more hope from those better spirits who had withstood the prerogative in its exorbitance, as they now sustained it in its decline, yet it could not be easy to foretell that they would preserve sufficient influence to keep steady the balance of power, in the contingency of any decisive success of the royal arms.

But, on the other hand, the house of commons presented still less favourable prospects. We should not indeed judge over-severely some acts of a virtuous indignation in the first moments of victory,[c] or those heats of debate, without some excess of which a popular assembly is in danger of falling into the opposite extreme of phlegmatic security. But, after every allowance has been made, he must bring very heated passions to the records of those times who does not perceive in the conduct of that body a series of glaring violations, not only of positive and constitutional, but of those higher principles which are paramount to all immediate policy. Witness the ordinance for disarming recusants passed by both houses in August, 1641, and that in November authorising the earl of Leicester to raise men for the defence

[c] The impeachments of lord Finch and of judge Berkeley for high treason are at least as little justifiable in point of law as that of Strafford. Yet, because the former of these was moved by lord Falkland, Clarendon is so far from objecting to it that he imputes as a fault to the parliamentary leaders their lukewarmness in this prosecution, and insinuates that they were desirous to save Finch. See especially the new edition of Clarendon, vol. i. Appendix. But they might reasonably think that Finch was not of sufficient importance to divert their attention from the grand apostate, whom they were determined to punish. Finch fled to Holland; so that then it would have been absurd to take much trouble about his impeachment: Falkland, however, opened it to the lords, 14 Jan. 1641, in a speech containing full as many extravagant propositions as any of St. John's. Berkeley, besides his forwardness about ship-money, had been notorious for subserviency to the prerogative. The house sent the usher of the black rod to the court of king's bench, while the judges were sitting, who took him away to prison, "which struck a great terror," says Whitelock, "in the rest of his brethren then sitting in Westminster-hall, and in all his profession." The impeachment against Berkeley for high treason ended in his paying a fine of 10,000*l*. But what appears strange and unjustifiable is, that the houses suffered him to sit for some terms as a judge with this impeachment over his head. The only excuse for this is that there were a great many vacancies on that bench.

of Ireland without warrant under the great seal, both manifest encroachments on the executive power;[d] and the enormous extension of privilege, under which every person accused on the slightest testimony of disparaging their proceedings, or even of introducing new-fangled ceremonies in the church, a matter wholly out of their cognizance, was dragged before them as a delinquent, and lodged in their prison.[e] Witness the outrageous attempts to intimidate the minority of their own body in the commitment of Mr. Palmer, and afterwards of sir Ralph Hopton to the Tower, for such language used in debate as would not have excited any observation in ordinary times;—their continual encroachments on the rights and privileges of the lords, as in their intimation that if bills thought by them necessary for the public good should fall in the upper house, they must join with the minority of the lords in representing the same to the king;[f] or in the impeachment of the duke of Richmond

[d] Journals, Aug. 30 and Nov. 9. It may be urged in behalf of these ordinances, that the king had gone into Scotland against the wish of the two houses, and after refusing to appoint a custos regni at their request. But if the exigency of the case might justify, under those circumstances, the assumption of an irregular power, it ought to have been limited to the period of the sovereign's absence.

[e] Parl. Hist. 671, et alibi. Journals, passim. Clarendon, i. 475, says, this began to pass all bounds after the act rendering them indissoluble. "It had never," he says, "been attempted before this parliament to commit any one to prison, except for some apparent breach of privilege, such as the arrest of one of their members, or the like." Instances of this, however, had occurred before, of which I have mentioned in another place the grossest, that of Floyd, in 1621. The lords, in March, 1642, condemned one Sandford, a tailor, for cursing the parliament, to be kept at work in Bridewell during his life, besides some minor inflictions. Rushworth. A strange order was made by the commons, Dec. 10, 1641, that sir William Earl having given information of some dangerous words spoken by certain persons, the speaker shall issue a warrant to apprehend *such persons as sir William Earl should point out.*

[f] The entry of this in the Journals is too characteristic of the tone assumed in the commons to be omitted. "This committee [after naming some of the warmest men] is appointed to prepare heads for a conference with the lords, and to acquaint them what bills this house hath passed and sent up to their lordships, which much concern the safety of the kingdom, but have had no consent of their lordships unto them; and that this house being the representative body of the whole kingdom, and their lordships being but as particular persons, and coming to parliament in a particular capacity, that if they shall not be pleased to consent to the passing of those acts and others necessary to the preservation and safety of the kingdom, that then this house, together with such of the lords that are more sensible of the safety of the kingdom, may join together and represent the same unto his majesty." This was on December 3, 1641, before the argument from necessity could be pretended, and evidently contains the germ of the resolution of February, 1649, that the house of lords was useless.

The resolution was moved by Mr. Pym; and on Mr. Godolphin's objecting, very sensibly, that if they went to the king with the lesser part of the lords, the greater part of the lords might go to the king with the lesser part of them, he was commanded to withdraw (Verney MS.):

for words, and those of the most trifling nature, spoken in the upper house;[g]—their despotic violation of the rights of the people, in imprisoning those who presented or prepared respectful petitions in behalf of the established constitution;[h] while they encouraged those of a tumultuous multitude at their bar in favour of innovation;[i]—their usurpation at once of the judicial and legislative powers in all that related to the church, particularly by their committee for scandalous ministers, under which denomination, adding reproach to injury, they subjected all who did not reach the standard of puritan perfection to contumely and vexation, and ultimately to expulsion from their lawful property.[k] Witness the impeachment of the twelve bishops for treason, on account of their protestation against all that should be done in the house of lords during their compelled absence through fear of the populace; a protest not perhaps entirely well expressed, but abundantly justifiable in its argument by the plainest principles of law.[m] These

and an order appears on the Journals, that on Tuesday next the house would take into consideration the offence now given by words spoken by Mr. Godolphin. Nothing farther, however, seems to have taken place.

[g] This was carried Jan. 27, 1642, by a majority of 223 to 123, the largest number, I think, that voted for any question during the parliament. Richmond was an eager courtier, and, perhaps, an enemy to the constitution, which may account for the unusual majority in favour of his impeachment, but cannot justify it. He had merely said, on a proposition to adjourn, "Why should we not adjourn for six months?"

[h] Parl. Hist. 1147, 1150, 1158. Clarendon, ii. 284, 346.

[i] Clarendon, 322. Among other petitions presented at this time the noble author inserts one from the porters of London. Mr. Brodie asserts of this that "it is nowhere to be found or alluded to, so far as I recollect, except in Clarendon's History; and I have no hesitation in pronouncing it a forgery by that author to disgrace the petitions which so galled him and his party. The journals of the commons give an account of every petition; and I have gone over them *with the utmost care*, in order to ascertain whether such a petition ever was presented, and yet cannot discover a trace of it." (iii. 306.) This writer is here too precipitate. No sensible man will believe Clarendon to have committed so foolish and useless a forgery; and this petition is fully noticed, though not inserted at length, in the journal of February 3rd.

[k] Nalson, ii. 234, 245.

[m] The bishops had so few friends in the house of commons that in the debate arising out of this protest all agreed that they should be charged with treason, except one gentleman, who said he thought them only mad, and proposed that they should be sent to Bedlam instead of the Tower. Even Clarendon bears rather hard on the protest, chiefly, as is evident, because it originated with Williams. In fact, several of these prelates had not courage to stand by what they had done, and made trivial apologies. Parl. Hist. 996. Whether the violence was such as to form a complete justification for their absenting themselves is a question of fact which we cannot well determine. Three bishops continued at their posts, and voted against the bill for removing them from the house of lords. See a passage from Hall's Hard Measure, in Wordsworth's Eccles. Biogr., v. 317. The king always entertained a notion that this act was

great abuses of power, becoming daily more frequent, as they became less excusable, would make a sober man hesitate to support them in a civil war, wherein their success must not only consummate the destruction of the crown, the church, and the peerage, but expose all who had dissented from their proceedings, as it ultimately happened, to an oppression less severe perhaps, but far more sweeping, than that which had rendered the star-chamber odious.

But it may reasonably also be doubted whether, in staking their own cause on the perilous contingencies of war, the house of commons did not expose the liberties for which they professedly were contending to a far greater risk than they could have incurred even by peace with an insidious court. For let any one ask himself what would have been the condition of the parliament if by the extension of that panic which in fact seized upon several regiments, or by any of those countless accidents which determine the fate of battles, the king had wholly defeated their army at Edgehill? Is it not probable, nay, in such a supposition, almost demonstrable, that in those first days of the civil war, before the parliament had time to discover the extent of its own resources, he would have found no obstacle to his triumphal entry into London? And, in such circumstances, amidst the defection of the timid and lukewarm, the consternation of the brawling multitude, and the exultation of his victorious troops, would the triennial act itself, or those other statutes which he had very reluctantly conceded, have stood secure? Or, if we believe that the constitutional supporters of his throne, the Hertfords, the Falklands, the Southamptons, the Spencers, would still have had sufficient influence to shield from violent hands that palladium which they had assisted to place in the building, can there be a stronger argument against the necessity of taking up arms for the defence of liberties, which, even in the contingency of defeat, could not have been subverted?

There were many indeed at that time, as there have

null in itself; and in one of his proclamations from York not very judiciously declares his intention to preserve the privileges of the *three* estates of parliament. The lords admitted the twelve bishops to bail; but, with their usual pusillanimity, recommitted them on the commons' expostulation. Parl. Hist. 1092.

been ever since, who, admitting all the calamities incident to civil war, of which this country reaped the bitter fruits for twenty years, denied entirely that the parliament went beyond the necessary precautions for self-defence, and laid the whole guilt of the aggression at the king's door. He had given, it was said, so many proofs of a determination to have recourse to arms, he had displayed so insidious an hostility to the privileges of parliament, that if he should be quietly allowed to choose and train soldiers under the name of a militia, through hired servants of his own nomination, the people might find themselves either robbed of their liberties by surprise, or compelled to struggle for them in very unfavourable circumstances. The commons, with more loyal respect perhaps than policy, had opposed no obstacle to his deliberate journey towards the north, which they could have easily prevented,[n] though well aware that he had no other aim but to collect an army; was it more than ordinary prudence to secure the fortified town of Hull with its magazine of arms from his grasp, and to muster the militia in each county under the command of lieutenants in whom they could confide, and to whom, from their rank and personal character, he could frame no just objection?

These considerations are doubtless not without weight, and should restrain such as may not think them sufficient from too strongly censuring those who, deeming that either civil liberty or the ancient constitution must be sacrificed, persisted in depriving Charles I. of every power which, though pertaining to a king of England, he could not be trusted to exercise. We are, in truth, after a lapse of ages, often able to form a better judgment of the course that ought to have been pursued in political emergencies than those who stood nearest to the scene. Not only have we our knowledge of the event to guide and correct our imaginary determinations, but we are free from those fallacious rumours, those pretended secrets, those imperfect and illusive views, those personal prepossessions, which in every

[n] May, p. 187, insinuates that the civil war should have been prevented by more vigorous measures on the part of the parliament. And it might probably have been in their power to have secured the king's person before he reached York. But the majority were not ripe for such violent proceedings.

age warp the political conduct of the most well-meaning. The characters of individuals, so frequently misrepresented by flattery or party rage, stand out to us revealed by the tenor of their entire lives, or by the comparison of historical anecdotes, and that more authentic information which is reserved for posterity. Looking as it were from an eminence, we can take a more comprehensive range, and class better the objects before us in their due proportions and in their bearings on one another. It is not easy for us even now to decide, keeping in view the maintenance of the entire constitution, from which party in the civil war greater mischief was to be apprehended; but the election was, I am persuaded, still more difficult to be made by contemporaries. No one, at least, who has given any time to the study of that history will deny that among those who fought in opposite battalions at Edgehill and Newbury, or voted in the opposite parliaments of Westminster and Oxford, there were many who thought much alike on general theories of prerogative and privilege, divided only perhaps by some casual prejudices, which had led these to look with greater distrust on courtly insidiousness, and those with greater indignation at popular violence. We cannot believe that Falkland and Colepepper differed greatly in their constitutional principles from Whitelock and Pierpoint, or that Hertford and Southampton were less friends to a limited monarchy than Essex and Northumberland.

There is, however, another argument sometimes alleged of late, in justification of the continued attacks on the king's authority, which is the most specious, as it seems to appeal to what are now denominated the Whig principles of the constitution. It has been said that, sensible of the maladministration the nation had endured for so many years (which, if the king himself were to be deemed by constitutional fiction ignorant of it, must at least be imputed to evil advisers), the house of commons sought only that security which, as long as a sound spirit continues to actuate its members, it must ever require—the appointment of ministers in whose fidelity to the public liberties it could better confide; that by carrying frankly into effect those counsels which he had unwisely abandoned upon the earl of Bedford's death, and bestowing the responsible offices of the state on men approved

for patriotism, he would both have disarmed the jealousy of his subjects and insured his own prerogative, which no ministers are prone to impair.

Those who are struck by these considerations may not, perhaps, have sufficiently reflected on the changes which the king had actually made in his administration since the beginning of the parliament. Besides those already mentioned, Essex, Holland, Say, and St. John, he had, in the autumn of 1641, conferred the post of secretary of state on lord Falkland, and that of master of the rolls on sir John Colepepper, both very prominent in the redress of grievances and punishment of delinquent ministers during the first part of the session, and whose attachment to the cause of constitutional liberty there was no sort of reason to distrust. They were indeed in some points of a different way of thinking from Pym and Hampden, and had doubtless been chosen by the king on that account. But it seems rather beyond the legitimate bounds of parliamentary opposition to involve the kingdom in civil war, simply because the choice of the crown had not fallen on its leaders. The real misfortune was, that Charles did not rest in the advice of his own responsible ministers, against none of whom the house of commons had any just cause of exception. The theory of our constitution in this respect was very ill established; and, had it been more so, there are perhaps few sovereigns, especially in circumstances of so much novelty, who would altogether conform to it. But no appointment that he could have made from the patriotic band of parliament would have furnished a security against the intrigues of his bed-chamber, or the influence of the queen.

The real problem that we have to resolve, as to the political justice of the civil war, is not the character, the past actions, or even the existing designs of Charles; not even whether he had as justly forfeited his crown as his son was deemed to have done for less violence and less insincerity; not even, I will add, whether the liberties of his subjects could have been absolutely secure under his government; but whether the risk attending his continuance upon the throne with the limited prerogatives of an English sovereign were great enough to counterbalance the miseries of protracted civil war, the

perils of defeat, and the no less perils, as experience showed, of victory. Those who adopt the words spoken by one of our greatest orators, and quoted by another, "There was ambition, there was sedition, there was violence; but no man shall persuade me that it was not the cause of liberty on one side, and of tyranny on the other," have for themselves decided this question.[o] But as I know (and the history of eighteen years is my witness) how little there was on one side of such liberty as a wise man would hold dear, so I am not yet convinced that the great body of the royalists, the peers and gentry of England, were combating for the sake of tyranny. I cannot believe them to have so soon forgotten their almost unanimous discontent at the king's arbitrary government in 1640, or their general concurrence in the first salutary measures of the parliament. I cannot think that the temperate and constitutional language of the royal declarations and answers to the house of commons in 1642, known to have proceeded from the pen of Hyde, and as superior to those on the opposite side in argument as they are in eloquence, was intended for the willing slaves of tyranny. I cannot discover in the extreme reluctance of the royalists to take up arms, and their constant eagerness for an accommodation (I speak not of mere soldiers, but of the greater and more important portion of that party), that zeal for the king's re-establishment in all his abused prerogatives which some connect with the very names of a royalist or a cavalier.[p]

[o] These words are ascribed to lord Chatham, in a speech of Mr. Grattan, according to lord John Russell, in his Essay on the History of the English Government, p. 56.

[p] Clarendon has several remarkable passages, chiefly towards the end of the fifth book of his History, on the slowness and timidity of the royalist party before the commencement of the civil war. The peers at York, forming, in fact, a majority of the upper house—for there were nearly forty of them—displayed much of this. Want of political courage was a characteristic of our aristocracy at this period, bravely as many behaved in the field. But I have no doubt that a real jealousy of the king's intentions had a considerable effect.

They put forth a declaration, signed by all their hands, on the 15th of June, 1642, professing before God their full persuasion that the king had no design to make war on the parliament, and that they saw no colour of preparations or counsels that might reasonably beget a belief of any such designs; but that all his endeavours tended to the settlement of the protestant religion, the just privileges of parliament, the liberty of the subject, &c. This was an ill-judged and even absurd piece of hypocrisy, calculated to degrade the subscribers, since the design of raising troops was hardly concealed, and every part of the king's conduct since his arrival at York manifested it. The commission of array, authorising certain persons in each county

It is well observed by Burnet, in answer to the vulgar notion that Charles I. was undone by his concessions, that, but for his concessions, he would have had no party at all. This is, in fact, the secret of what seems to astonish the parliamentary historian, May, of the powerful force that the king was enabled to raise, and the protracted resistance he opposed. He had succeeded, according to the judgment of many real friends of the constitution, in putting the house of commons in the wrong. Law, justice, moderation, once ranged against him, had gone over to his banner. His arms might reasonably be called defensive, if he had no other means of preserving himself from the condition, far worse than captivity, of a sovereign compelled to a sort of suicide upon his own honour and authority. For, however it may be alleged that a king is bound in conscience to sacrifice his power to the public will, yet it could hardly be inexcusable not to have practised this disinterested morality; especially while the voice of his people was by no means unequivocal, and while the major part of one house of parliament adhered openly to his cause.[q]

It is indeed a question perfectly distinguishable from that of the abstract justice of the king's cause, whether he did not too readily abandon his post as a constitutional head of the parliament; whether, with the greater part of the peers and a very considerable minority in the

to raise troops, was in fact issued immediately after this declaration. It is rather mortifying to find lord Falkland's name, not to mention others, in this list; but he probably felt it impossible to refuse his signature, without throwing discredit on the king; and no man engaged in a party ever did, or ever can, act with absolute sincerity; or at least he can be of no use to his friends if he does adhere to this uncompromising principle.

The commission of array was ill received by many of the king's friends, as not being conformable to law. Clarendon, iii. 91. Certainly it was not so; but it was justifiable as the means of opposing the parliament's ordinance for the militia, at least equally illegal. This, however, shows very strongly the cautious and constitutional temper of many of the royalists, who could demur about the legality of a measure of necessity, since no other method of raising an army would have been free from similar exception. The same reluctance to enter on the war was displayed in the propositions for peace, which the king, in consequence of his council's importunity, sent to the two houses through the earl of Southampton, just before he raised his standard at Nottingham.

[q] According to a list made by the house of lords, May 25, 1642, the peers with the king at York were thirty-two; those who remained at Westminster, forty-two. But of the latter, more than ten joined the others before the commencement of the war, and five or six afterwards; two or three of those at York returned. During the war there were at the outside thirty peers who sat in the parliament.

commons, resisting in their places at Westminster all violent encroachments on his rights, he ought not rather to have sometimes persisted in a temperate though firm assertion of them, sometimes had recourse to compromise and gracious concession, instead of calling away so many of his adherents to join his arms as left neither numbers nor credit with those who remained. There is a remarkable passage in lord Clarendon's Life, not to quote Whitelock and other writers less favourable to Charles, where he intimates his own opinion that the king would have had a fair hope of withstanding the more violent faction, if, after the queen's embarkation for Holland, in February, 1642, he had returned to Whitehall; admitting, at the same time, the hazards and inconveniences to which this course was liable.[r] That he resolved on trying the fortune of arms, his noble historian insinuates to have been the effect of the queen's influence, with whom before her departure he had concerted his future proceedings. Yet, notwithstanding the deference owing to contemporary opinions, I cannot but suspect that Clarendon has, in this instance as in some other passages, attached too great an importance to particular individuals, measuring them rather by their rank in the state than by that capacity and energy of mind, which, in the levelling hour of revolution, are the only real pledges of political influence. He thought it of the utmost consequence to the king that he should gain over the earls of Essex and Northumberland, both, or at least the former, wavering between the two parties, though voting entirely with the commons. Certainly the king's situation required every aid, and his repulsive hardness towards all who had ever given him offence displayed an obstinate unconciliating character which deprived him of some support he might have received. But the subsequent history of these two celebrated earls, and indeed of all the moderate adherents to the parliament, will hardly lead us to believe that they could have afforded the king any protection. Let us suppose that he had returned to Whitehall instead of proceeding towards the north. It is evident that he must either have passed the bill for the militia or seen the ordinances of both houses carried into effect without

[r] Life of Clarendon, p. 56.

his consent. He must have consented to the abolition of episcopacy, or at least have come into some compromise which would have left the bishops hardly a shadow of their jurisdiction and pre-eminence. He must have driven from his person those whom he best loved and trusted. He would have found it impossible to see again the queen without awakening distrust and bringing insult on them both. The royalist minority of parliament, however considerable in numbers, was lukewarm and faint-hearted. That they should have gained strength so as to keep a permanent superiority over their adversaries, led as they were by statesmen so bold and profound as Hampden, Pym, St. John, Cromwell, and Vane, is what, from the experience of the last twelve months, it was unreasonable to anticipate. But even if the commons had been more favourably inclined, it would not have been in their power to calm the mighty waters that had been moved from their depths. They had permitted the populace to mingle in their discussions, testifying pleasure at its paltry applause, and encouraging its tumultuous aggressions on the minority of the legislature. What else could they expect than that, so soon as they ceased to satisfy the city apprentices, or the trained bands raised under their militia bill, they must submit to that physical strength which is the ultimate arbiter of political contentions?

Thus, with evil auspices, with much peril of despotism on the one hand, with more of anarchy on the other, amidst the apprehensions and sorrows of good men, the civil war commenced in the summer of 1642. I might now perhaps pass over the period that intervened, until the restoration of Charles II., as not strictly belonging to a work which undertakes to relate the progress of the English constitution. But this would have left a sort of chasm that might disappoint the reader; and as I have already not wholly excluded our more general political history, without a knowledge of which the laws and government of any people must be unintelligible, it will probably not be deemed an unnecessary digression, if I devote one chapter to the most interesting and remarkable portion of British story.

CHAPTER X.

FROM THE BREAKING OUT OF THE CIVIL WAR TO THE RESTORATION.

PART I.

Success of the King in the first part of the War — Efforts by the Moderate Party for Peace — Affair at Brentford — Treaty of Oxford — Impeachment of the Queen — Waller's Plot — Secession of some Peers to the King's Quarters — Their Treatment there impolitic — The Anti-pacific Party gain the ascendant at Westminster — The Parliament makes a new Great Seal — And takes the Covenant — Persecution of the Clergy who refuse it — Impeachment and Execution of Laud — Decline of the King's Affairs in 1644 — Factions at Oxford — Royalist Lords and Commoners summoned to that City — Treaty of Uxbridge — Impossibility of Agreement — The Parliament insist on unreasonable Terms — Miseries of the War — Essex and Manchester suspected of Lukewarmness — Self-denying Ordinance — Battle of Naseby — Desperate Condition of the King's Affairs — He throws himself into the hands of the Scots — His Struggles to preserve Episcopacy, against the advice of the Queen and others — Bad Conduct of the Queen — Publication of Letters taken at Naseby — Discovery of Glamorgan's Treaty — King delivered up by the Scots — Growth of the Independents and Republicans — Opposition to the Presbyterian Government — Toleration — Intrigues of the Army with the King — His Person seized — The Parliament yield to the Army — Mysterious Conduct of Cromwell — Imprudent Hopes of the King — He rejects the Proposals of the Army — His Flight from Hampton Court — Alarming Votes against him — Scots' Invasion — The Presbyterians regain the Ascendant — Treaty of Newport — Gradual Progress of a Republican Party — Scheme among the Officers of bringing Charles to Trial — This is finally determined — Seclusion of Presbyterian Members — Motives of some of the King's Judges — Question of his Execution Discussed — His Character — Icon Basilike.

FACTIONS that, while still under some restraint from the forms at least of constitutional law, excite our disgust by their selfishness or intemperance, are little likely to redeem their honour when their animosities have kindled civil warfare. If it were difficult for an upright man to enlist with an entire willingness under either the royalist or the parliamentarian banner at the commencement of hostilities in 1642, it became far less easy for him to desire the complete success of one or the other cause, as advancing time displayed the faults of both in

darker colours than they had previously worn. Of the parliament—to begin with the more powerful and victorious party—it may be said, I think, with not greater severity than truth, that scarce two or three public acts of justice, humanity, or generosity, and very few of political wisdom or courage, are recorded of them from their quarrel with the king to their expulsion by Cromwell.

Notwithstanding the secession from parliament before the commencement of the war of nearly all the peers who could be reckoned on the king's side, and of a pretty considerable part of the commons, there still continued to sit at Westminster many sensible and moderate persons, who thought that they could not serve their country better than by remaining at their posts, and laboured continually to bring about a pacification by mutual concessions. Such were the earls of Northumberland, Holland, Lincoln, and Bedford, among the peers; Selden, Whitelock, Hollis, Waller, Pierpoint, and Rudyard, in the commons. These, however, would have formed but a very ineffectual minority if the war itself, for at least twelve months, had not taken a turn little expected by the parliament. The hard usage Charles seemed to endure in so many encroachments on his ancient prerogative awakened the sympathies of a generous aristocracy, accustomed to respect the established laws, and to love monarchy, as they did their own liberties, on the score of its prescriptive title; averse also to the rude and morose genius of puritanism, and not a little jealous of those upstart demagogues who already threatened to subvert the graduated pyramid of English society. Their zeal placed the king at the head of a far more considerable army than either party had anticipated.[a] In the first battle, that of Edgehill, though he did not remain master of the field, yet all the military consequences were evidently in his favour.[b] In the ensuing campaign of

Success of the king in the first part of the war.

[a] May, p. 165.

[b] Both sides claimed the victory. May, who thinks that Essex, by his injudicious conduct after the battle, lost the advantage he had gained in it, admits that the effect was to strengthen the king's side. "Those who thought his success impossible began to look upon him as one who might be a conqueror, and many neuters joined him," p. 176. Ludlow is of the same opinion as to Essex's behaviour and its consequences: "Our army, after some refreshment at Warwick, returned to London, not like men that had obtained a victory, but as if they had been beaten," p. 52. This shows

1643, the advantage was for several months entirely his own, nor could he be said to be a loser on the whole result, notwithstanding some reverses that accompanied the autumn. A line drawn from Hull to Southampton would suggest no very incorrect idea of the two parties, considered as to their military occupation of the kingdom, at the beginning of September, 1643; for if the parliament, by the possession of Gloucester and Plymouth, and by some force they had on foot in Cheshire and other midland parts, kept their ground on the west of this line, this was nearly compensated by the earl of Newcastle's possession at that time of most of Lincolnshire, which lay within it. Such was the temporary effect, partly indeed of what may be called the fortune of war, but rather of the zeal and spirit of the royalists, and of their advantage in a more numerous and intrepid cavalry.[c]

It has been frequently supposed, and doubtless seems to have been a prevailing opinion at the time, that if the king, instead of sitting down before Gloucester at the end of August, had marched upon London, combining his operations with Newcastle's powerful army, he would have brought the war to a triumphant conclusion.[d] In these matters men judge principally by the event. Whether it would have been prudent in Newcastle to have left behind him the strong garrison of Hull under Fairfax, and an unbroken though inferior force commanded by lord Willoughby and Cromwell in Lincolnshire, I must leave to military critics; suspecting, however, that he would have found it difficult to draw away

that they had not, in fact, obtained much of a victory; and lord Wharton's report to parliament almost leads us to think the advantage, upon the whole, to have been with the king. Parl. Hist. ii. 1495.

[c] May, 212. Baillie, 373, 391.

[d] May, Baillie, Mrs. Hutchinson, are as much of this opinion as sir Philip Warwick and other royalist writers. It is certain that there was a prodigious alarm, and almost despondency, among the parliamentarians. They immediately began to make entrenchments about London, which were finished in a month. May, p. 214. In the Somers Tracts, iv. 534, is an interesting letter from a Scotsman then in London, giving an account of these fortifications, which, considering the short time employed about them, seem to have been very respectable, and such as the king's army, with its weak cavalry and bad artillery, could not easily have carried. Lord Sunderland, four days before the battle of Newbury, wherein he was killed, wrote to his wife, that the king's affairs had never been in a more prosperous condition; that sitting down before Gloucester had prevented *their finishing the war that year*, "which nothing could keep us from doing, if we had a month's more time." Sidney Letters, ii. 671. He alludes in the same letters to the divisions in the royalist party.

the Yorkshire gentry and yeomanry, forming the strength of his army, from their unprotected homes. Yet the parliamentary forces were certainly, at no period of the war, so deficient in numbers, discipline, and confidence; and it may well be thought that the king's want of permanent resources, with his knowledge of the timidity and disunion which prevailed in the capital, rendered the boldest and most forward game his true policy.

Efforts by the moderate party for peace.

It was natural that the moderate party in parliament should acquire strength by the untoward fortune of its arms. Their aim, as well as that of the constitutional royalists, was a speedy pacification; neither party so much considering what terms might be most advantageous to their own side, as which way the nation might be freed from an incalculably protracted calamity. On the king's advance to Colnbrook, in November, 1642, the two houses made an overture for negotiation, on which he expressed his readiness to enter. But, during the parley, some of his troops advanced to Brentford, and a sharp action took place in that town. The parliament affected to consider this such a mark of perfidy and bloodthirstiness as justified them in breaking off the treaty, a step to which they were doubtless more inclined by the king's retreat, and their discovery that his army was less formidable than they had apprehended. It is very probable, or rather certain, even from Clarendon's account, that many about the king, if not himself, were sufficiently indisposed to negotiate; yet, as no cessation of arms had been agreed upon, or even proposed, he cannot be said to have waived the unquestionable right of every belligerent to obtain all possible advantage by arms, in order to treat for peace in a more favourable position. But, as mankind are seldom reasonable in admitting such maxims against themselves, he seems to have injured his reputation by this affair of Brentford.

Affair at Brentford.

A treaty, from which many ventured to hope much, was begun early in the next spring at Oxford, after a struggle which had lasted through the winter within the walls of parliament.* But though the

Treaty at Oxford.

* Parl. Hist. iii. 45, 48. It seems natural to think that, if the moderate party were able to contend so well against their opponents, after the desertion of a great many royalist members who had joined the king, they would have main-

party of Pym and Hampden at Westminster were not able to prevent negotiation against the strong bent of the house of lords, and even of the city, which had been taught to lower its tone by the interruption of trade, and especially of the supply of coals from Newcastle, yet they were powerful enough to make the houses insist on terms not less unreasonable than those contained in their nineteen propositions the year before.[f] The king could not be justly expected to comply with these; but, had they been more moderate, or if the parliament would have in some measure receded from them, we have every reason to conclude, both by the nature of the terms he proposed in return, and by the positive testimony of Clarendon, that he would not have come sincerely into any scheme of immediate accommodation. The reason assigned by that author for the unwillingness of Charles to agree on a cessation of arms during the negotiation, though it had been originally suggested by himself (and which reason would have been still more applicable to a treaty of peace), is one so strange that it requires all the authority of one very unwilling to confess any weakness or duplicity of the king to be believed. He had made a solemn promise to the queen on her departure for Holland the year before, "that he would receive no person who had disserved him into any favour or trust, without her privity and consent; and that, as she had undergone many reproaches and calumnies at the entrance into the war, so he would never make any peace but by her interposition and mediation, that the kingdom might receive that blessing only from her."[g] Let this be called, as the reader may

tained a decisive majority, had these continued in their places. But it is to be considered, on the other hand, that the king could never have raised an army, if he had not been able to rally the peers and gentry round his banner, and that in his army lay the real secret of the temporary strength of the pacific party.

[f] Parl. Hist. iii. 68, 94. Clarendon, May, Whitelock. If we believe the last (p. 68), the king, who took as usual a very active part in the discussions upon this treaty, would frequently have been inclined to come into an adjustment of terms; if some of the more warlike spirits about him (glancing apparently at Rupert) had not over-persuaded his better judgment. This, however, does not accord with what Clarendon tells us of the queen's secret influence, nor indeed with all we have reason to believe of the king's disposition during the war.

[g] Life of Clarendon, p. 79. This induced the king to find pretexts for avoiding the cessation, and was the real cause of his refusal to restore the earl of Northumberland to his post of lord admiral during this treaty of Oxford, which was urged by Hyde. That peer was, at this time, and for several months after-

please, the extravagance of romantic affection, or rather the height of pusillanimous and criminal subserviency, we cannot surely help acknowledging that this one marked weakness in Charles's character, had there been nothing else to object, rendered the return of cordial harmony between himself and his people scarce within the bounds of natural possibility. In the equally balanced condition of both forces at this particular juncture, it may seem that some compromise on the great question of the militia was not impracticable, had the king been truly desirous of accommodation; for it is only just to remember that the parliament had good reason to demand some security for themselves, when he had so peremptorily excluded several persons from amnesty. Both parties, in truth, were standing out for more than either according to their situation as belligerents, or even perhaps according to the principles of our constitution, they could reasonably claim; the two houses having evidently no direct right to order the military force, nor the king, on the other hand, having a clear prerogative to keep on foot an army, which is not easily distinguishable from a militia, without consent of parliament. The most reasonable course apparently would have been for the one to have waived a dangerous and disputed authority, and the other to have desisted from a still more unconstitutional pretension, which was done by the bill of rights in 1689. The kingdom might have well dispensed, in that age, with any military organization, and this seems to have been the desire of Whitelock, and probably of other reasonable men. But, unhappily, when swords are once drawn in civil war, they are seldom sheathed till experience has shown which blade is the sharper.

Though this particular instance of the queen's prodigious ascendency over her husband remained secret till

wards, inclining to come over to the king; but, on the bad success of Holland and Bedford in their change of sides, he gave into the opposite course of politics, and joined the party of lords Say and Wharton, in determined hostility to the king.

Dr. Lingard has lately thrown doubts upon this passage in Clarendon, but upon grounds which I do not clearly understand. Hist. of England, x. 208, note. That no vestige of its truth should appear, as he observes, in the private correspondence between Charles and his consort (if he means the letters taken at Naseby, and I know no other), is not very singular; as the whole of that correspondence is of a much later date.

the publication of lord Clarendon's Life, it was in general well known, and put the leaders of the commons on a remarkable stroke of policy, in order to prevent the renewal of negotiations. On her landing in the north, with a supply of money and arms, as well as with a few troops she had collected in Holland, they carried up to the lords an impeachment for high treason against her. This measure (so obnoxious was Henrietta) met with a less vigorous opposition than might be expected, though the moderate party was still in considerable force.[h] It was not only an insolence which a king, less uxorious than Charles, could never pardon, but a violation of the primary laws and moral sentiments that preserve human society, to which the queen was acting in obedience. Scarce any proceeding of the long parliament seems more odious than this; whether designed by way of intimidation, or to exasperate the king, and render the composure of existing differences more impracticable. Impeachment of the queen.

The enemies of peace were strengthened by the discovery of what is usually called Waller's plot, a scheme for making a strong demonstration of the royalist party in London, wherein several members of both houses appear to have been more or less concerned. Upon the detection of this conspiracy, the two houses of parliament took an oath not to lay down arms, so long as the papists now in arms should be protected from the justice of parliament; and never to adhere to, or willingly assist, the forces raised by the king, without the consent of both houses. Every individual member of the peers and commons took this oath; some of them being then in secret concert with the king, and others entertaining intentions, as their conduct very soon evinced, of deserting to his side.[i] Such was the com- Waller's plot.

[h] I cannot discover in the Journals any division on this impeachment. But Hollis inveighs against it in his memoirs as one of the flagrant acts of St. John's party: and there is an account of the debate on this subject in the Somers Tracts, v. 500; whence it appears that it was opposed by Maynard, Waller, Whitelock, and others; but supported by Pym, Strode, Long, Glynn, and by Martin with his usual fury and rudeness. The first of these carried up the impeachment to the house of lords.

This impeachment was not absolutely lost sight of for some time. In January, 1644, the lords appointed a committee to consider what mode of proceeding for bringing the queen to trial was most agreeable to a parliamentary way, and to peruse precedents. Parl. Hist. 194.

[i] Parl Hist. 129

mencement of a system of perjury, which lasted for many years, and belies the pretended religion of that hypocritical age. But we may always look for this effect from oppressive power, and the imposition of political tests.

The king was now in a course of success, which made him rather hearken to the sanguine courtiers of Oxford, where, according to the invariable character of an exiled faction, every advantage or reverse brought on a disproportionate exultation or despondency, than to those better counsellors who knew the precariousness of his good fortune. He published a declaration, wherein he denied the two houses at Westminster the name of a parliament; which he could no more take from them, after the bill he had passed, than they could deprive him of his royal title, and by refusing which he shut up all avenues to an equal peace.[k] This was soon followed by so extraordinary a political error as manifests the king's want of judgment, and the utter improbability that any event of the war could have restored to England the blessings of liberty and repose. Three peers of the moderate party, the earls of Holland, Bedford, and Clare, dissatisfied with the preponderance of a violent faction in the commons, left their places at Westminster, and came into the king's quarters. It might be presumed, from general policy as well as from his constant declarations of a desire to restore peace, that they would have been received with such studied courtesy as might serve to reconcile to their own mind a step which, when taken with the best intentions, is always equivocal and humiliating. There was great reason to believe that the earl of Northumberland, not only the first peer then in England as to family and fortune, but a man highly esteemed for prudence, was only waiting to observe the reception of those who went first to Oxford before he followed their steps. There were even well-founded hopes of the earl of Essex, who, though incapable of betraying his trust as commander of the parliament's army, was, both from personal and public motives, dis-

Secession of some peers to the king's quarters.

k Parl. Hist. 133, June 20; Clarendon, iv. 155. He published, however, a declaration soon after the taking of Bristol, containing full assurances of his determination to govern by the known laws. Parl. Hist. 144.

inclined to the war-party in the commons. There was much to expect from all those who had secretly wished well to the king's cause, and from those whom it is madness to reject or insult, the followers of fortune, the worshippers of power, without whom neither fortune nor power can long subsist. Yet such was the state of Charles's council-board at Oxford that some were for arresting these proselyte earls; and it was carried with difficulty, after they had been detained some time at Wallingford, that they might come to the court. But they met there with so many and such general slights, that, though they fought in the king's army at Newbury, they found their position intolerably ignominious, and, after about three months, returned to the parliament with many expressions of repentance, and strong testimonies to the evil counsels of Oxford.[m]

Their treatment there impolitic.

The king seems to have been rather passive in this strange piece of impolicy, but by no means to have taken the line that became him, of repressing the selfish jealousy or petty revengefulness of his court. If the earl of Holland was a man whom both he and the queen, on the score of his great obligations to them, might justly reproach with some ingratitude, there was nothing to be objected against the other two, save their continuance at Westminster, and compliance in votes that he disliked. And if this were to be visited by neglect and discountenance, there could, it was plain, be no reconciliation between him and the parliament. For who could imagine that men of courage and honour, while possessed of any sort of strength and any hopes

[m] Clarendon, iv. 192, 262; Whitelock, 70. They met with a worse reception at Westminster than at Oxford, as indeed they had reason to expect. A motion that the earl of Holland should be sent to the Tower was lost in the commons by only one voice. Parl. Hist. 180. They were provoked at his taking his seat without permission. After long refusing to consent, the lords agreed to an ordinance, June 29, 1644, that no peer or commoner, who had been in the king's quarters, should be admitted again to sit in either house. Parl. Hist. 271. This severity was one cause of Essex's discontent, which was increased when the commons refused him leave to take Holland with him on his expedition into the west that summer. Baillie, i. 426; Whitelock, 87. If it be asked why this Roman rigour was less impolitic in the parliament than in the king, I can only answer that the stronger and the weaker have different measures to pursue. But relatively to the pacification of the kingdom, upon such terms as fellow-citizens ought to require from each other, it was equally blamable in both parties, or rather more so in that possessed of the greater power.

of preserving it, would put up with a mere indemnity for their lives and fortunes, subject to be reckoned as pardoned traitors, who might thank the king for his clemency, without presuming to his favour? Charles must have seen his superiority consolidated by repeated victories, before he could prudently assume this tone of conquest. Inferior in substantial force, notwithstanding his transient advantages, to the parliament, he had no probability of regaining his station but by defections from their banner; and these, with incredible folly, he seemed to decline; far unlike his illustrious father-in-law, who had cordially embraced the leaders of a rebellion much more implacable than the present. For the Oxford counsellors and courtiers, who set themselves against the reception of the three earls, besides their particular animosity towards the earl of Holland,[n] and that general feeling of disdain and distrust which, as Clarendon finely observes, seems by nature attached to all desertion and inconstancy, whether in politics or religion (even among those who reap the advantage of it, and when founded upon what they ought to reckon the soundest reasons), there seem grounds to suspect that they had deeper and more selfish designs than they cared to manifest. They had long beset the king with solicitations for titles, offices, pensions; but these were necessarily too limited for their cravings. They had sustained, many of them, great losses; they had performed real or pretended services for the king; and it is probable that they looked to a confiscation of enemies' property for their indemnification or reward. This would account for an adverseness to all overtures for peace, as decided, at this period, among a great body of the cavaliers, as it was with the factions of Pym or Vane.

These factions were now become finally predominant

[n] It is intimated by Clarendon that some at Oxford, probably Jermyn and Digby, were jealous of Holland's recovering the influence he had possessed with the queen, who seems to have retained no resentment against him. As to Bedford and Clare, they would probably have been better received, if not accompanied by so obnoxious an intriguer of the old court. This seems to account for the unanimity which the historian describes to have been shown in the council against their favourable reception. Light and passionate tempers, like that of Henrietta, are prone to forget injuries; serious and melancholic ones, like that of Charles, never lose sight of them.

at Westminster. On the news that prince Rupert had taken Bristol, the last and most serious loss that the parliament sustained, the lords agreed on propositions for peace to be sent to the king, of an unusually moderate tone.[o] The commons, on a division of 94 to 65, determined to take them into consideration; but the lord mayor Pennington having procured an address of the city against peace, backed by a tumultuous mob, a small majority was obtained against concurring with the other house.[p] It was after this that the lords above mentioned, as well as many of the commons, quitted Westminster. The prevailing party had no thoughts of peace till they could dictate its conditions. Through Essex's great success in raising the siege of Gloucester, the most distinguished exploit in his military life, and the battle of Newbury, wherein the advantage was certainly theirs, they became secure against any important attack on the king's side, the war turning again to endless sieges and skirmishes of partisans. And they now adopted two important measures, one of which gave a new complexion to the quarrel.

The anti-pacific party gain the ascendant at Westminster.

Littleton, the lord-keeper of the great seal, had carried it away with him to the king. This of itself put a stop to the regular course of the executive government, and to the administration of justice within the parliament's quarters. No employments could be filled up, no writs for election of members issued, no commissions for holding the assizes completed, without the indispensable formality of affixing the great seal. It must surely excite a smile, that men who had raised armies, and

[o] Baillie deplores at this time "the horrible fears and confusions in the city, the king everywhere being victorious. In the city a strong and insolent party for him." P. 391. "The malignants stirred a multitude of women of the meaner and more infamous rank to come to the door of both houses, and cry tumultuously for peace on any terms. This tumult could not be suppressed but by violence, and killing some three or four women, and hurting some of them, and imprisoning many." P. 300.

[p] Lords' and Commons' Journals; Parl. Hist. 158, &c.; Clarendon, iv. 183; Hollis's Memoirs. Hollis was a teller for the majority on the first occasion; he had left the warlike party some months (Baillie, i. 356); and his name is in the Journals repeatedly, from November, 1642, as teller against them, though he is charged with having said the year before that he abhorred the name of accommodation. Hutchinson, p. 296. Though a very honest, and to a certain extent an able man, he was too much carried away by personal animosities; and as these shifted his principles shifted also.

fought battles against the king, should be perplexed how to get over so technical a difficulty. But the great seal, in the eyes of the English lawyers, has a sort of mysterious efficacy, and passes for the depository of royal authority in a higher degree than the person of the king. The commons prepared an ordinance in July for making a new great seal, in which the lords could not be induced to concur till October. The royalists, and the king himself, exclaimed against this as the most audacious treason, though it may be reckoned a very natural consequence of the state in which the parliament was placed; and in the subsequent negotiations it was one of the minor points in dispute, whether he should authorise the proceedings under the great seal of the two houses, or they consent to sanction what had been done by virtue of his own.

The parliament makes a new great seal.

The second measure of parliament was of greater moment and more fatal consequences. I have already mentioned the stress laid by the bigoted Scots presbyterians on the establishment of their own church-government in England. Chiefly perhaps to conciliate this people, the house of commons had entertained the bill for abolishing episcopacy; and this had formed a part of the nineteen propositions that both houses tendered to the king.[q] After the action at Brentford they concurred in a declaration to be delivered to the Scots commissioners, resident in London, wherein, after setting forth the malice of the prelatical clergy in hindering the reformation of ecclesiastical government, and professing their own desire willingly and affectionately to pursue a closer union in such matters between the two nations, they request their brethren of Scotland to raise such forces as they should judge sufficient for the securing the peace of their own borders against ill-affected persons there; as likewise to assist them in suppressing the army of papists and foreigners which, it was expected, would shortly be on foot in England.[r]

[q] The resolution, that government by archbishops, bishops, &c., was inconvenient and ought to be taken away, passed both houses unanimously, September 10, 1642. Parl. Hist. ii. 1465. But the ordinance to carry this fully into effect was not made till October, 1646. Scobell's Ordinances.

[r] Parl. Hist. iii. 15.

This overture produced for many months no sensible effect. The Scots, with all their national wariness, suspected that, in spite of these general declarations in favour of their church polity, it was not much at heart with most of the parliament, and might be given up in a treaty, if the king would concede some other matters in dispute. Accordingly, when the progress of his arms, especially in the north, during the ensuing summer, compelled the parliament to call in a more pressing manner, and by a special embassy, for their aid, they resolved to bind them down by such a compact as no wavering policy should ever rescind. They insisted therefore on the adoption of the solemn league and covenant, founded on a similar association of their own five years before, through which they had successfully resisted the king and overthrown the prelatic government. The covenant consisted in an oath to be subscribed by all sorts of persons in both kingdoms, whereby they bound themselves to preserve the reformed religion in the church of Scotland, in doctrine, worship, discipline, and government, according to the word of God and practice of the best reformed churches; and to endeavour to bring the churches of God in the three kingdoms to the nearest conjunction and uniformity in religion, confession of faith, form of church-government, directory for worship, and catechizing; to endeavour, without respect of persons, the extirpation of popery, prelacy (that is, church-government by archbishops, bishops, their chancellors, and commissaries; deans and chapters, archdeacons, and all other ecclesiastical officers depending on that hierarchy), and whatsoever should be found contrary to sound doctrine and the power of godliness; to preserve the rights and privileges of the parliaments and the liberties of the kingdoms, and the king's person and authority, in the preservation and defence of the true religion and liberties of the kingdoms; to endeavour the discovery of incendiaries and malignants, who hinder the reformation of religion, and divide the king from his people, that they may be brought to punishment; finally, to assist and defend all such as should enter into this covenant and not suffer themselves to be withdrawn from it, whether to revolt to the opposite party, or to give into a detestable indifference or neutrality. In con-

formity to the strict alliance thus established between the two kingdoms, the Scots commissioners at Westminster were intrusted, jointly with a committee of both houses, with very extensive powers to administer the public affairs.[a]

The parliament subscribes to the covenant.

Every member of the commons who remained at Westminster, to the number of 228, or perhaps more, and from 20 to 30 peers that formed their upper house,[b] subscribed this deliberate pledge to overturn the established church; many of them with extreme reluctance, both from a dislike of the innovation, and from a consciousness that it raised a most formidable obstacle to the restoration of peace; but with a secret reserve, for which some want of precision in the language of this covenant (purposely introduced by Vane, as is said, to shelter his own schemes) afforded them a sort of apology.[c] It was next imposed on all civil and military officers, and upon all the beneficed clergy.[d] A severe persecution fell on the faithful chil-

[a] This committee, appointed in February, 1644, consisted of the following persons, the most conspicuous, at that time, of the parliament: the earls of Northumberland, Essex, Warwick, and Manchester; lords Say, Wharton, and Roberts; Mr. Pierpoint, the two sir Henry Vanes, sir Philip Stapylton, sir William Waller, sir Gilbert Gerrard, sir William Armyn, sir Arthur Haslerig; Messrs. Crew, Wallop, St. John, Cromwell, Brown, and Glynn. Parl. Hist. iii. 248.

[b] Somers Tracts, iv. 533. The names marked in the Parliamentary History as having taken the covenant are 236.

The earl of Lincoln alone, a man of great integrity and moderation, though only conspicuous in the Journals, refused to take the covenant, and was excluded in consequence from his seat in the house; but, on his petition next year, though, as far as appears, without compliance, was restored, and the vote rescinded. Parl. Hist. 393. He regularly protested against all violent measures; and we still find his name in the minority on such occasions after the Restoration.

Baillie says, the desertion of about six peers at this time to the king was of great use to the passing of the covenant in *a legal way*. Vol. i. p. 390.

[c] Burnet's Mem. of Duke of Hamilton. p. 239. I am not quite satisfied as to this, which later writers seem to have taken from Burnet. It may well be supposed that the ambiguity of the covenant was not very palpable; since the Scots presbyterians, a people not easily cozened, were content with its expression. According to fair and honest rules of interpretation, it certainly bound the subscribers to the establishment of a church-government conformed to that of Scotland; namely, the presbyterian, exclusive of all mixture with any other. But Selden, and the other friends of moderate episcopacy who took the covenant, justified it, I suppose, to their consciences, by the pretext that, in renouncing the jurisdiction of bishops, they meant the unlimited jurisdiction without concurrence of any presbyters. It was not, however, an action on which they could reflect with pleasure. Baxter says that Gataker, and some others of the assembly, would not subscribe the covenant, but on the understanding that they did not renounce primitive episcopacy by it. Life of Baxter, p. 48. These controversial subtleties elude the ordinary reader of history.

[d] After the war was ended none of the

dren of the Anglican church. Many had already been sequestered from their livings, or even subjected to imprisonment, by the parliamentary committee for scandalous ministers, or by subordinate committees of the same kind set up in each county within their quarters; sometimes on the score of immoralities or false doctrine, more frequently for what they termed malignity, or attachment to the king and his party.[7] Yet wary men, who meddled not with politics, might hope to elude this inquisition. But the covenant, imposed as a general test, drove out all who were too conscientious to pledge themselves by a solemn appeal to the Deity to resist the polity which they generally believed to be of his institution. What number of the clergy were ejected (most of them but for refusing the covenant, and for no moral offence or imputed superstition) it is impossible to ascertain. Walker, in his Sufferings of the Clergy, a folio volume published in the latter end of Anne's reign, with all the virulence and partiality of the high-church faction in that age, endeavoured to support those who had reckoned it at 8000; a palpable over-statement upon his own showing, for he cannot produce near 2000 names after a most diligent

Persecution of the clergy who refuse it.

king's party were admitted to compound for their estates without taking the covenant. This Clarendon, in one of his letters, calls "making haste to buy damnation at two years' purchase." Vol. ii. p. 286.

[7] Neal, ii. 19, &c., is fair enough in censuring the committees, especially those in the country. "The greatest part [of the clergy] were cast out for malignity [attachment to the royal cause]; superstition and false doctrine were hardly ever objected; yet the proceedings of the sequestrators were not always justifiable; for, whereas a court of judicature should rather be counsel for the prisoner than the prosecutor, the commissioners considered the king's clergy as their most dangerous enemies, and were ready to lay hold of all opportunities to discharge them their pulpits." P. 24. But if we can rely at all on White's Century of Malignant Ministers (and I do not perceive that Walker has been able to controvert it), there were a good many cases of irregular life in the clergy, so far at least as haunting alehouses; which, however, was much more common, and consequently less indecent, in that age than at present. See also Baxter's Life, p. 74; whose authority, though open to some exceptions on the score of prejudice, is at least better than Walker's.

The king's party were not less oppressive towards ministers whom they reckoned puritan; which unluckily comprehended most of those who were of strict lives, especially if they preached Calvinistically, unless they redeemed that suspicion by strong demonstrations of loyalty. Neal, p. 21. Baxter's Life, p. 42. And, if they put themselves forward on this side, they were sure to suffer most severely for it on the parliament's success; an ordinance of April 1, 1643, having sequestered the private estates of all the clergy who had aided the king. Thus the condition of the English clergy was every way most deplorable; and in fact they were utterly ruined.

investigation. Neal, however, admits 1600, probably more than one-fifth of the beneficed ministers in the kingdom.[z] The biographical collections furnish a pretty copious martyrology of men the most distinguished by their learning and virtues in that age. The remorseless and indiscriminate bigotry of presbyterianism might boast that it had heaped disgrace on Walton, and driven Lydiat to beggary; that it trampled on the old age of Hales, and embittered with insult the dying moments of Chillingworth.

But the most unjustifiable act of these zealots, and one of the greatest reproaches of the long parliament, was the death of archbishop Laud. In the first days of the session, while the fall of Strafford struck every one with astonishment, the commons had carried up an impeachment against him for high treason, in fourteen articles of charge; and he had lain ever since in the Tower, his revenues and even private estate sequestered, and in great indigence. After nearly three years' neglect, specific articles were exhibited against him in October, 1643, but not proceeded on with vigour till December, 1644; when, for whatever reason, a determination was taken to pursue this unfortunate prelate to death. The charges against him, which Wild, Maynard, and other managers of the impeachment were to aggravate into treason, related partly to those papistical innovations which had nothing of a political character about them, partly to the violent proceedings in the star-chamber and high-commission courts, wherein Laud was very prominent as a councillor, but certainly without any greater legal responsibility than fell on many others. He defended himself, not always prudently or satisfactorily, but with courage and ability; never receding from his magnificent notions of spiritual power, but endeavouring to shift the blame of the sentences pronounced by the council on those who concurred with him. The imputation of popery he repelled by a list of the converts he had made; but the word was equivocal, and he could not deny the difference

Impeachment and execution of Laud.

[z] Neal, p. 93. He says it was not tendered, by favour, to some of the clergy who had not been active against the parliament and were reputed Calvinists. P. 59. Sanderson is said to be one instance. This historian, an honest and well-natured man at bottom, justly censures its imposition.

between his protestantism and that of our Reformation. Nothing could be more monstrous than the allegation of treason in this case. The judges, on a reference by the lords, gave it to be understood, in their timid way, that the charges contained no legal treason.[a] But, the commons having changed their impeachment into an ordinance for his execution, the peers were pusillanimous enough to comply. It is said by Clarendon that only seven lords were in the house on this occasion: but the Journals unfortunately bear witness to the presence of twenty.[b] Laud had amply merited punishment for his tyrannical abuse of power; but his execution at the age of seventy, without the slightest pretence of political necessity, was a far more unjustifiable instance of it than any that was alleged against him.

Pursuant to the before-mentioned treaty, the Scots army of 21,000 men marched into England in January, 1644. This was a very serious accession to Charles's difficulties, already sufficient to dissipate all hopes of final triumph, except in the most sanguine minds. His successes, in fact, had been rather such as to surprise well-judging men than to make them expect any more favourable termination of the war than by a fair treaty. From the beginning it may be said that the yeomanry and trading classes of towns were generally hostile to the king's side, even in those counties which were in his military occupation; except in a few, such as Cornwall, Worcester, Salop, and most of Wales, where the prevailing sentiment was chiefly royalist;[c] and this disaffection was pro-

Decline of the king's affairs in 1644.

[a] "All the judges answered that they could deliver no opinion in this case, in point of treason by the law: because they could not deliver any opinion in point of treason but what was particularly expressed to be treason in the statute of 25 E. III., and so referred it wholly to the judgment of this house." Lords' Journals, 17th December, 1644.

[b] Lords' Journals, 4th January. It is not said to be done nem. con.

[c] "The difference in the temper of the common people of both sides was so great that they who inclined to the parliament left nothing unperformed that might advance the cause; whereas they who wished well to the king thought they had performed their duty in doing so, and that they had done enough for him in that they had done nothing against him." Clarendon, p. 3, 452. "Most of the gentry of the county (Nottinghamshire)," says Mrs. Hutchinson, were disaffected to the parliament; most of the middle sort, the able substantial freeholders and the other commons, who had not their dependence upon the malignant nobility and gentry, adhered to the parliament." P. 81. This I conceive to have been the case in much the greater part of England. Baxter, in his Life, p. 30, says just the same thing in a passage worthy of notice.

digiously increased through the licence of his ill-paid and ill-disciplined army. On the other hand, the gentry were in a great majority attached to his cause, even in the parts of England which lay subject to the parliament. But he was never able to make any durable impression on what were called the associated counties, extending from Norfolk to Sussex inclusively, within which no rising could be attempted with any effect;[d] while, on the other hand, the parliament possessed several garrisons, and kept up considerable forces, in that larger portion of the kingdom where he might be reckoned superior. Their resources were far greater; and the taxes imposed by them, though exceedingly heavy, were more regularly paid and less ruinous to the people than the sudden exactions, half plunder half contribution, of the ravenous cavaliers. The king lost ground during the winter. He had built hopes on bringing over troops from Ireland; for the sake of which he made a truce, then called the cessation, with the rebel catholics. But this reinforcement having been beaten and dispersed by Fairfax at Namptwich, he had the mortification of finding that this scheme had much increased his own unpopularity, and the distrust entertained of him even by his adherents, without the smallest advantage. The next campaign was marked by the great defeat of Rupert and Newcastle at Marston Moor, and the loss of the north of England; a blow so terrible as must have brought on his speedy ruin, if it had not been in some degree mitigated by his strange and unexpected success over Essex in the west, and by the

But the Worcestershire populace, he says, were violent royalists: p. 39. Clarendon observes in another place, iii. 41, "There was in this county (Cornwall), as throughout the kingdom, a wonderful and superstitious reverence towards the name of a parliament, and a prejudice to the power of the court." He afterwards, p. 436, calls "an implicit reverence to the name of a parliament the fatal disease of the whole kingdom." So prevalent was the sense of the king's arbitrary government, especially in the case of ship-money. Warburton remarks that he never expressed any repentance, or made any confession in his public declarations that his former administration had been illegal. Notes on Clarendon, p. 566. But this was not, perhaps, to be expected; and his repeated promises to govern according to law might be construed into tacit acknowledgments of past errors.

[d] The associated counties, properly speaking, were at first Norfolk, Suffolk, Essex, Hertford, Cambridge; to which some others were added. Sussex, I believe, was not a part of the association: but it was equally within the parliamentary pale, though the gentry were remarkably loyal in their inclinations. The same was true of Kent.

tardiness of the Scots in making use of their victory. Upon the result of the campaign of 1644, the king's affairs were in such bad condition that nothing less than a series of victories could have reinstated them; yet not so totally ruined as to hold out much prospect of an approaching termination to the people's calamities.

There had been, from the very commencement of the war, all that distraction in the king's councils at Oxford, and all those bickerings and heart-burnings among his adherents, which naturally belong to men embarked in a dangerous cause with different motives and different views. The military men, some of whom had served with the Swedes in Germany, acknowledged no laws but those of war; and could not understand that, either in annoying the enemy or providing for themselves, they were to acknowledge any restraints of the civil power. The lawyers, on the other hand, and the whole constitutional party, laboured to keep up, in the midst of arms, the appearances at least of legal justice and that favourite maxim of Englishmen, the supremacy of civil over military authority, rather more strictly perhaps than the nature of their actual circumstances would admit. At the head of the former party stood the king's two nephews, Rupert and Maurice, the younger sons of the late unfortunate elector palatine, soldiers of fortune (as we may truly call them), of rude and imperious characters, avowedly despising the council and the common law, and supported by Charles, with all his injudiciousness and incapacity for affairs, against the greatest men of the kingdom. Another very powerful and obnoxious faction was that of the catholics, proud of their services and sacrifices, confident in the queen's protection, and looking at least to a full toleration as their just reward. They were the natural enemies of peace, and little less hated at Oxford than at Westminster.[e]

Factions at Oxford.

[e] Clarendon, passim. May, 160. Baillie, i. 416. See, in the Somers Tracts, v. 495, a dialogue between a gentleman and a citizen, printed at Oxford, 1643. Though of course a royalist pamphlet, it shows the disunion that prevailed in that unfortunate party, and inveighs against the influence of the papists, in consequence of which the marquis of Hertford is said to have declined the king's service. Rupert is praised, and Newcastle struck at. It is written, on the whole, in rather a lukewarm style of loyalty. The earl of Holland and sir Edward Dering gave out as their reason for quitting the king's side that there was great danger of popery. This was much exaggerated; yet lord Sunderland talks the same language.

Royalist lords and commoners summoned to that city.

At the beginning of the winter of 1643 the king took the remarkable step of summoning the peers and commoners of his party to meet in parliament at Oxford. This was evidently suggested by the constitutionalists with the intention of obtaining a supply by more regular methods than forced contribution, and of opposing a barrier to the military and popish interests.[f] Whether it were equally calculated to further the king's cause may admit of some doubt. The royalist convention indeed, which name it ought rather to have taken than that of parliament, met in considerable strength at Oxford. Forty-three peers, and one hundred and eighteen commoners, subscribed a letter to the earl of Essex, expressing their anxiety for a treaty of peace; twenty-nine of the former, and fifty-seven of the latter, it is said, being then absent on the king's service, or other occasions.[g] Such a display of numbers, nearly double in one house and nearly half in the other, of those who remained at Westminster, might have an effect on the nation's prejudices, and at least redeem the king from the charge of standing singly against his parliament. But they came in no spirit of

Sidney Papers, ii. 667. Lord Falkland's dejection of spirits, and constant desire of peace, must chiefly be ascribed to his disgust with the councils of Oxford, and the greater part of those with whom he was associated.

E quel che più ti graverà le spalle
Sarà la compagnia malvagia e ria,
Nella quel tu cadrai in questa valle.

We know too little of this excellent man, whose talents however and early pursuits do not seem to have particularly qualified him for public life. It is evident that he did not plunge into the loyal cause with all the zeal of his friend Hyde; and the king doubtless had no great regard for the counsels of one who took so very different a view of some important matters from himself. Life of Clarendon, 48. He had been active against Strafford, and probably had a bad opinion of Laud. The prosecution of Finch for high treason he had himself moved. In the Ormond Letters, i. 20, he seems to be struck at by one writing from Oxford, June 1, 1643: "God forbid that the best of men and kings be so used by some bad hollow-hearted counsellors, who affect too much the parliamentary way. Many spare not to name them; and I doubt not but you have heard their names."

[f] It appears by the late edition of Clarendon, iv. 351, that he was the adviser of calling the Oxford parliament. The former editors omitted his name.

[g] Parl. Hist. 218. The number who took the covenant in September, 1643, appears by a list of the long parliament in the same work, vol. ii., to be 236; but twelve of these are included in both lists, having gone afterwards into the king's quarters. The remainder, about 100, were either dead since the beginning of the troubles, or for some reason absented themselves from both assemblies. Possibly the list of those who took the covenant is not quite complete; nor do I think the king had much more than about sixty peers on his side. The parliament however could not have produced thirty. Lords' Journals, Jan. 22, 1644. Whitelock, p. 80, says that two hundred and eighty appeared in the house of commons, Jan. 1644, besides one hundred absent in the parliament's service; but this cannot be quite exact.

fervid loyalty, rather distrustful of the king, especially on the score of religion; averse to some whom he had injudiciously raised to power, such as Digby and Cottington; and so eager for pacification as not perhaps to have been unwilling to purchase it by greater concessions than he could prudently make.[h] Peace however was by no means brought nearer by their meeting; the parliament, jealous and alarmed at it, would never recognise their existence, and were so provoked at their voting the lords and commons at Westminster guilty of treason, that, if we believe a writer of some authority, the two houses unanimously passed a vote on Essex's motion, summoning the king to appear by a certain day.[i] But the Scots commissioners had force enough to turn aside such violent suggestions, and ultimately obtained the concurrence of both houses in propositions for a treaty.[k] They had begun to find themselves less likely to sway the counsels of Westminster than they had expected, and dreaded the rising ascendancy of Cromwell. The treaty was opened at Uxbridge in January, 1645. Treaty of Uxbridge. But neither the king nor his adversaries entered on it with minds sincerely bent on peace: they, on the one hand, resolute not to swerve from the utmost rigour of a conqueror's terms, without having conquered; and he, though more secretly, cherishing illusive hopes of a more triumphant restoration to power than any treaty could be expected to effect.[m]

[h] Rushworth, Abr. v. 266 and 296; where is an address to the king, intimating, if attentively considered, a little apprehension of popery and arbitrary power. Baillie says, in one of his letters, "The first day the Oxford parliament met, the king made a long speech; but many being ready to give in papers for the removing of Digby, Cottington, and others from court, the meeting was adjourned for some days." i. 429. Indeed, the restoration of Cottington, and still more of Windebank, to the king's councils, was no pledge of protestant or constitutional measures. This opposition, so natural to parliaments in any circumstances, disgusted Charles. In one of his letters to the queen he congratulates himself on being "freed from the place of all mutinous motions, his mongrel parliament." It may be presumed that some of those who obeyed the king's summons to Oxford were influenced less by loyalty than a consideration that their estates lay in parts occupied by his troops; of course the same is applicable to the Westminster parliament.

[i] Baillie, 441. I can find no mention of this in the Journals; but, as Baillie was then in London, and in constant intercourse with the leaders of parliament, there must have been some foundation for his statement, though he seems to have been inaccurate as to the fact of the vote.

[k] Parl. Hist. 299, et post. Clarendon, v. 16. Whitelock, 110, &c. Rush. Abr. v. 449, &c.

[m] It was impossible for the king to avoid this treaty. Not only his Oxford parliament, as might naturally be ex-

Impossibility of agreement.

The three leading topics of discussion among the negotiators at Uxbridge were the church, the militia, and the state of Ireland. Bound by their unhappy covenant, and watched by their Scots colleagues, the English commissioners on the parliament side demanded the complete establishment of a presbyterian polity, and the substitution of what was called the directory for the Anglican liturgy. Upon this head there was little prospect of a union. The king had deeply imbibed the tenets of Andrews and Laud, believing an episcopal government indispensably necessary to the valid administration of the sacraments, and the very existence of a Christian church. The Scots, and a portion of the English clergy, were equally confident that their presbyterian form was established by the apostles as a divine model, from which it was unlawful to depart.[n] Though most of the laity in this kingdom entertained less narrow opinions, the parliamentary commissioners thought the king ought rather to concede such a point than themselves, especially as his former

pected, were openly desirous of peace, but a great part of the army had, in August, 1644, while opposed to that of Essex in the west, taken the extraordinary step of sending a letter to that general, declaring their intentions for the rights and liberties of the people, privileges of parliament, and protestant religion against popish innovations; and that, on the faith of subjects, the honour and reputation of gentlemen and soldiers, they would with their lives maintain that which his majesty should publicly promise in order to a bloodless peace; they went on to request that Essex, with six more, would meet the general (earl of Brentford), with six more, to consider of all means possible to reconcile the unhappy differences and misunderstandings that have so long afflicted the kingdom. Sir Edward Walker's Historical Discourses, 59. The king was acquainted with this letter before it was sent, but after some hands had been subscribed to it. He consented, but evidently with great reluctance, and even indignation; as his own expressions testify in this passage of Walker, whose manuscript here, as in many other places, contains interlineations by Charles himself. It was doubtless rather in a mutinous spirit, which had spread widely through the army, and contributed to its utter ruin in the next campaign. I presume it was at the king's desire that the letter was signed by the general as well as by prince Maurice, and all the colonels, I believe, in his army, to take off the appearance of a faction; but it certainly originated with Wilmot, Percy, and some of those whom he thought ill affected. See Clarendon, iv. 527, et post. Rushw. Abr. v. 348, 358.

[n] The king's doctors, Steward and Sheldon, argued at Uxbridge that episcopacy was jure divino; Henderson and others, that presbytery was so. Whitelock, 132. These churchmen should have been locked up like a jury, without food or fire, till they agreed.

If we may believe Clarendon, the earl of Loudon offered in the name of the Scots that, if the king would give up episcopacy, they would not press any of the other demands. It is certain however that they would never have suffered him to become the master of the English parliament; and, if this offer was sincerely made, it must have been from a conviction that he could not become such.

consent to the abolition of episcopacy in Scotland weakened a good deal the force of his plea of conscience; while the royalists, even could they have persuaded their master, thought episcopacy, though not absolutely of divine right (a notion which they left to the churchmen), yet so highly beneficial to religion and so important to the monarchy, that nothing less than extreme necessity, or at least the prospect of a signal advantage, could justify its abandonment. They offered, however, what in an earlier stage of their dissensions would have satisfied almost every man, that limited scheme of episcopal hierarchy, above mentioned as approved by Usher, rendering the bishop among his presbyters much like the king in parliament, not free to exercise his jurisdiction, nor to confer orders without their consent, and offered to leave all ceremonies to the minister's discretion. Such a compromise would probably have pleased the English nation, averse to nothing in their established church except its abuses; but the parliamentary negotiators would not so much as enter into discussion upon it.[o]

They were hardly less unyielding on the subject of the militia. They began with a demand of naming all the commanders by sea and land, including the lord-lieutenant of Ireland, and all governors of garrisons, for an unlimited time. The king, though not very willingly, proposed that the command should be vested in twenty persons, half to be named by himself, half by the parliament, for the term of three years, which he afterwards extended to seven, at the expiration of which time it should revert to the crown. But the utmost concession that could be obtained from the other side was to limit their exclusive possession of this power to seven years, leaving the matter open for an ulterior arrangement by act of parliament at their termination.[p] Even if this treaty had been conducted between two belligerent states, whom rivalry or ambition often excite to press every demand which superior power can extort from weakness, there yet was

The parliament insist on unreasonable terms.

[o] Rushworth, Whitelock, Clarendon. The latter tells in his Life, which reveals several things not found in his History, that the king was very angry with some of his Uxbridge commissioners, especially Mr. Bridgman, for making too great concessions with respect to episcopacy. He lived, however, to make himself much greater.

[p] Whitelock, 133.

nothing in the condition of the king's affairs which should compel him thus to pass under the yoke, and enter his capital as a prisoner. But we may also remark that, according to the great principle that the English constitution, in all its component parts, was to be maintained by both sides in this contest, the question for parliament was not what their military advantages or resources for war entitled them to ask, but what was required for the due balance of power under a limited monarchy. They could rightly demand no further concession from the king than was indispensable for their own and the people's security; and I leave any one who is tolerably acquainted with the state of England at the beginning of 1645 to decide whether their privileges and the public liberties incurred a greater risk by such an equal partition of power over the sword as the king proposed, than his prerogative and personal freedom would have encountered by abandoning it altogether to their discretion. I am far from thinking that the acceptance of the king's propositions at Uxbridge would have restored tranquillity to England. He would still have repined at the limitations of monarchy, and others would have conspired against its existence. But of the various consequences which we may picture to ourselves as capable of resulting from a pacification, that which appears to me the least likely is, that Charles should have re-established that arbitrary power which he had exercised in the earlier period of his reign. Whence, in fact, was he to look for assistance? Was it with such creatures of a court as Jermyn or Ashburnham, or with a worn-out veteran of office like Cottington, or a rash adventurer like Digby, that he could outwit Vane, or overawe Cromwell, or silence the press and the pulpit, or strike with panic the stern puritan and the confident fanatic? Some there were, beyond question, both soldiers and courtiers, who hated the very name of a limited monarchy, and murmured at the constitutional language which the king, from the time he made use of the pens of Hyde and Falkland, had systematically employed in his public declarations.[q] But it is as certain

[q] The creed of this party is set forth in the Behemoth of Hobbes; which is, in other words, the application of those principles of government which are laid down in the Leviathan to the constitution and state of England in the civil

that the great majority of his Oxford parliament, and of those upon whom he must have depended either in the field or in council, were apprehensive of any victory that might render him absolute, as that Essex and Manchester were unwilling to conquer at the expense of the constitution.[r] The catholics, indeed, generally speaking, would have gone great lengths in asserting his authority. Nor is this any reproach to that body, by no means naturally less attached to their country and its liberties than other Englishmen, but driven by an unjust persecution to see their only hope of emancipation in the nation's servitude. They could not be expected to sympathise in that patriotism of the seventeenth century, which, if it poured warmth and radiance on the protestant, was to them as a devouring fire. But the king could have made no use of the catholics as a distinct body for any political purpose without uniting all other parties against him. He had already given so much offence, at the commencement of the war, by accepting the services which the catholic gentry were forward to offer, that, instead of a more manly justification, which the temper of the times, he thought, did not permit, he had recourse to the useless subterfuges of denying or extenuating the facts, and even to a strangely improbable recrimination, asserting on several occasions that the number of papists in the parliament's army was much greater than in his own.[s]

war. It is republished in baron Maseres's Tracts, ii. 565, 567. Sir Philip Warwick, in his Memoirs, 198, hints something of the same kind.

[r] Warburton, in the notes subjoined to the late edition of Clarendon, vii. 563, mentions a conversation he had with the duke of Argyle and lord Cobham (both soldiers, and the first a distinguished one) as to the conduct of the king and the earl of Essex after the battle of Edgehill. They agreed it was inexplicable on both sides by any military principle. Warburton explained it by the unwillingness to be *too victorious*, felt by Essex himself, and by those whom the king was forced to consult. Father Orleans, in a passage with which the bishop probably was acquainted, confirms this; and his authority is very good as to the secret of the court. Rupert, he says, proposed to march to London. "Mais l'esprit Anglois, qui ne se dement point même dans les plus attachés à la royauté, l'esprit Anglois, dis-je, toujours entêté de ces libertés si funestes au repos de la nation, porta la plus grande partie du conseil à s'opposer à ce dessein. Le prétexte fut qu'il étoit dangereux pour le roy de l'entreprendre, et pour la ville que le prince Robert l'exécutast, jeune comme il étoit, emporté, et capable d'y mettre le feu. La vraie raison étoit qu'ils craignoient que, si le roy entroit dans Londres les armes à la main, il ne prétendist sur la nation une espèce de droit de conquête, qui le rendist trop absolu." Révolut. d'Angleterre, iii. 104.

[s] Rushworth, Abr. iv. 550. At the very time that he was publicly denying

It may still indeed be questioned whether, admitting the propositions tendered to the king to have been unreasonable and insecure, it might not yet have been expedient, in the perilous condition of his affairs, rather to have tried the chances of peace than those of war. If he could have determined frankly and without reserve to have relinquished the church, and called the leaders of the presbyterian party in both houses to his councils, it is impossible to prove that he might not both have regained his power over the militia in no long course of time, and prevailed on the parliament to consent to its own dissolution. The dread that party felt of the republican spirit rising amongst the independents would have induced them to place in the hands of any sovereign they could trust full as much authority as our constitution permits. But no one who has paid attention to the history of that period will conclude that they could have secured the king against their common enemy, had he even gone wholly into their own measures.[t] And this were to suppose such an entire change in his character and ways of thinking as no external circumstances could produce. Yet his prospects, from a continuance of hostilities, were so unpromising, that most of the royalists would probably have hailed his almost unconditional submission at Uxbridge. Even the steady Richmond and Southampton, it is said, implored him to yield, and deprecated his misjudging confidence in promises of foreign aid or in the successes of Montrose.[u] The more

his employment of papists he wrote to Newcastle, commanding him to make use of all his subjects' services, without examining their consciences, except as to loyalty. Ellis's Letters, iii. 291, from an original in the Museum. No one can rationally blame Charles for anything in this but his inveterate and useless habit of falsehood. See Clarendon, iii. 610.

It is probable that some foreign catholics were in the parliament's service. But Dodd says, with great appearance of truth, that no one English gentleman of that persuasion was in arms on their side. Church History of Engl., iii. 28. He reports as a matter of hearsay, that, out of about five hundred gentlemen who lost their lives for Charles in the civil war, one hundred and ninety-four were catholics. They were, doubtless, a very powerful faction in the court and army. Lord Spencer (afterwards earl of Sunderland), in some remarkable letters to his wife from the king's quarters at Shrewsbury, in September, 1642, speaks of the insolency of the papists with great dissatisfaction. Sidney Papers, ii. 667.

[t] It cannot be doubted, and is admitted in a remarkable conversation of Hollis and Whitelock with the king at Oxford, in November, 1644, that the exorbitant terms demanded at Uxbridge were carried by the violent party, who disliked all pacification. Whitelock, p. 113.

[u] Baillie, ii. 91. He adds, "That which has been the greatest snare to the king is

lukewarm or discontented of his adherents took this opportunity of abandoning an almost hopeless cause: between the breach of the treaty of Uxbridge and the battle of Naseby, several of the Oxford peers came over to the parliament, and took an engagement never to bear arms against it. A few instances of such defection had occurred before.[x]

Miseries of the war.

It remained only, after the rupture of the treaty at Uxbridge, to try once more the fortune of war. The people, both in the king's and parliament's quarters, but especially the former, heard with dismay that peace could not be attained. Many of the perpetual skirmishes and captures of towns, which made every man's life and fortune precarious, have found no place in general history, but may be traced in the journal of Whitelock, or in the Mercuries and other fugitive sheets, great numbers of which are still extant. And it will appear, I believe, from these, that scarcely one county in England was exempt, at one time or other of the war, from becoming the scene of this unnatural contest. Compared, indeed, with the civil wars in France in the preceding century, there had been fewer acts of enormous cruelty, and less atrocious breaches of public faith. But much blood had been wantonly shed, and articles of capitulation had been very indifferently kept. "Either side," says Clarendon, "having somewhat to object to the other, the requisite honesty and justice of observing conditions was mutually, as it were by agreement, for a long time violated."[y] The royalist army, especially the cavalry, commanded by men either wholly unprincipled, or at least regardless of the people, and deeming them ill affected, the princes Rupert and Maurice, Goring and

the unhappy success of Montrose in Scotland." There seems, indeed, great reason to think that Charles, always sanguine, and incapable of calculating probabilities, was unreasonably elated by victories from which no permanent advantage ought to have been expected. Burnet confirms this on good authority. Introduction to History of his Times, 51.

[x] Whitelock, 169, 137, 142. Rushw. Abr. v. 193. The first deserter (except indeed the earls of Holland and Bedford) was sir Edward Dering, who came into the parliament's quarters, Feb. 1644. He was a weak man, of some learning, who had already played a very changeable part before the war.

[y] A flagrant instance of this was the plunder of Bristol by Rupert, in breach of the capitulation. I suspect that it was the policy of one party to exaggerate the cruelties of the other; but the short narratives dispersed at the time give a wretched picture of slaughter and devastation.

Wilmot, lived without restraint, or law, or military discipline, and committed every excess even in friendly quarters.[a] An ostentatious dissoluteness became characteristic of the cavalier, as a formal austerity was of the puritan: one spoiling his neighbour in the name of God, the other of the king. The parliament's troops were not quite free from these military vices, but displayed them in a much less scandalous degree, owing to their more religious habits and the influence of their presbyterian chaplains, to the better example of their commanders, and to the comparative, though not absolute, punctuality of their pay.[a] But this pay was raised through unheard-of assessments, especially an excise on liquors, a new name in England, and through the sequestration of the estates of all the king's adherents: resources of which he also had availed himself, partly by the rights of war, partly by the grant of his Oxford parliament.[b]

[a] Clarendon and Whitelock, passim. Baxter's Life, p. 44, 55. This licence of Maurice's and Goring's armies in the west first led to the defensive insurrection, if so it should be called, of the clubmen; that is, of yeomen and country people, armed only with clubs, who hoped, by numbers and concert, to resist effectually the military marauders of both parties, declaring themselves neither for king nor parliament, but for their own liberty and property. They were of course regarded with dislike on both sides; by the king's party when they first appeared in 1644, because they crippled the royal army's operations, and still more openly by the parliament next year, when they opposed Fairfax's endeavour to carry on the war in the counties bordering on the Severn. They appeared at times in great strength; but the want of arms and discipline made it not very difficult to suppress them. Clarendon, v. 197; Whitelock, 137; Parl. Hist. 379, 390.

The king himself, whose disposition was very harsh and severe, except towards the few he took into his bosom, can hardly be exonerated from a responsibility for some acts of inhumanity (see Whitelock, 67, and Somers Tracts, iv. 502, v. 369; Maseres's Tracts, i. 144, for the ill treatment of prisoners); and he might probably have checked the outrages which took place at the storming of Leicester, where he was himself present. Certainly no imputation of this nature can be laid at the door of the parliamentary commanders, though some of them were guilty of the atrocity of putting their Irish prisoners to death, in obedience, however, to an ordinance of parliament. Parl. Hist. iii. 295; Rushworth's Abridgment, v. 402. It passed October 24, 1644, and all remissness in executing it was to be reckoned a favouring of the Irish rebellion. When we read, as we do perpetually, these violent and barbarous proceedings of the parliament, is it consistent with honesty or humanity to hold up that assembly to admiration, while the faults on the king's side are studiously aggravated? The partiality of Oldmixon, Harris, Macaulay, and now of Mr. Brodie and Mr. Godwin, is full as glaring, to say the very least, as that of Hume.

[a] Clarendon and Baxter.

[b] The excise was first imposed by an ordinance of both houses in July, 1643 (Husband's Collection of Ordinances, p. 267), and afterwards by the king's convention at Oxford. See a view of the financial expedients adopted by both parties, in Lingard, x. 243. The plate brought in to the parliament's commissioners at Guildhall, in 1642, for which

A war so calamitous seemed likely to endure till it had exhausted the nation. With all the parliament's superiority, they had yet to subdue nearly half the kingdom. The Scots had not advanced southward, content with reducing Newcastle and the rest of the northern counties. These they treated almost as hostile, without distinction of parties, not only exacting contributions, but committing, unless they are much belied, great excesses of indiscipline; their presbyterian gravity not having yet overcome the ancient national propensities.[c] In the midland and western parts the king had just the worse, without having sustained material loss; and another summer might pass away in marches and countermarches, in skirmishes of cavalry, in tedious sieges of paltry fortifications, some of them mere country houses, which nothing but an amazing deficiency in that branch of military science could have rendered tenable. This protraction of the war had long given rise to no unnatural discontent with its management, and to suspicions, first of Essex, then of Manchester and others in command, as if they were secretly reluctant to complete the triumph of their employers. It is, indeed, not impossible that both these peers, especially the former, out of their desire to see peace restored on terms compatible with some degree of authority in the crown, and with the dignity of their own order, did not always press their advantages against the king as if he had been a public enemy.[d] They might have

Essex and Manchester suspected of luke-warmness.

they allowed the value of the silver, and one shilling per ounce more, is stated by Neal at 1,267,326*l.*, an extraordinary proof of the wealth of London; yet I do not know his authority, though it is probably good. The university of Oxford gave all they had to the king, but could not, of course, vie with the citizens.

The sums raised within the parliament's quarters, from the beginning of the war to 1647, are reckoned in a pamphlet of that year, quoted in Sinclair's Hist. of the Revenue, i. 283, at 17,512,400*l.* But, on reference to the tract itself, I find this written at random. The contributions, however, were really very great; and, if we add those to the king, and the loss by waste and plunder, we may form some judgment of the effects of the civil war.

[c] The independents raised loud clamours against the Scots army; and the northern counties naturally complained of the burthen of supporting them, as well as of their excesses. Many passages in Whitelock's journal during 1645 and 1646 relate to this. Hollis endeavours to deny or extenuate the charges; but he is too prejudiced a writer; and Baillie himself acknowledges a great deal. Vol. ii. 138, 142, 106.

[d] The chief imputation against Manchester was for not following up his victory in the second battle of Newbury, with which Cromwell openly taxed him. See Ludlow, i. 133. There certainly ap-

thought that, having drawn the sword avowedly for the preservation of his person and dignity as much as for the rights and liberties of the people, they were no farther bound by their trust than to render him and his adherents sensible of the impracticability of refusing their terms of accommodation.

Self-denying ordinance.

There could, however, be no doubt that Fairfax and Cromwell were far superior, both by their own talents for war and the discipline they had introduced into their army, to the earlier parliamentary commanders; and that, as a military arrangement, the self-denying ordinance was judiciously conceived. This, which took from all members of both houses their commands in the army, or civil employments, was, as is well known, the first great victory of the independent party which had grown up lately in parliament under Vane and Cromwell.[e] They carried another measure of no less

pears to have been a want of military energy on this occasion; but it is said by Baillie (ii. 76) that all the general officers, Cromwell not excepted, concurred in Manchester's determination. Essex had been suspected from the time of the affair at Brentford, or rather from the battle of Edgehill (Baillie and Ludlow); and his whole conduct, except in the celebrated march to relieve Gloucester, confirmed a reasonable distrust either of his military talents, or of his zeal in the cause. "He loved monarchy and nobility," says Whitelock, p. 108, "and dreaded those who had a design to destroy both." Yet Essex was too much a man of honour to enter on any private intrigues with the king. The other peers employed under the parliament, Stamford, Denbigh, Willoughby, were not successful enough to redeem the suspicions that fell upon their zeal.

All our republican writers, such as Ludlow and Mrs. Hutchinson in that age, Mrs. Macaulay and Mr. Brodie more of late, speak acrimoniously of Essex. "Most will be of opinion," says Mr. B. (History of British Empire, iii. 565), "that, as ten thousand pounds a-year out of the sequestered lands were settled upon him for his services, he was rewarded infinitely beyond his merits." The reward was doubtless magnificent; but the merit of Essex was this, that he made himself the most prominent object of vengeance in case of failure, by taking the command of an army to oppose the king in person at Edgehill; a command of which no other man in his rank was capable, and which could not, at that time, have been intrusted to any man of inferior rank, without dissolving the whole confederacy of the parliament.

It is to be observed, moreover, that the two battles of Newbury, like that of Edgehill, were by no means decisive victories on the side of the parliament; and that it is not clear whether either Essex or Manchester could have pushed the king much more than they did. Even after Naseby his party made a pretty long resistance, and he had been as much blamed as they for not pressing his advantages with vigour.

[e] It had been voted by the lords a year before, Dec. 12, 1643, "That the opinion and resolution of this house is from henceforth not to admit the members of either house of parliament into any place or office, excepting such places of great trust as are to be executed by persons of eminency and known integrity, and are necessary for the government and safety of the kingdom." But a motion to make this resolution into an ordinance was carried in the negative. Lords' Journals;

importance, collateral to the former; the new-modelling, as it was called, of the army; reducing it to twenty-one or twenty-two thousand men; discharging such officers and soldiers as were reckoned unfit, and completing their regiments by more select levies. The ordinance, after being once rejected by the lords, passed their house with some modifications in April.[f] But many joined them on this occasion for those military reasons which I have mentioned, deeming almost any termination of the war better than its continuance. The king's rejection of their terms at Uxbridge had disgusted, however unreasonably, some of the men hitherto accounted moderate, such as the earl of Northumberland and Pierpoint, who, deeming reconciliation impracticable, took from this time a different line of politics from that they had previously followed, and were either not alive to the danger of new-modelling the army, or willing to hope that it might be disbanded before that danger could become imminent. From Fairfax, too, the now general, they saw little to fear and much to expect; while Cromwell, as a member of the house of commons, was positively excluded by the ordinance itself. But, through a successful intrigue of his friends, this great man, already not less formidable to the presbyterian faction than to the royalists, was permitted to continue lieutenant-general.[g] The most popular justification for the self-denying ordinance, and yet perhaps its real condemnation, was soon found at Naseby; for there Fairfax and Cromwell triumphed not only over

Battle of Naseby.

Parl. Hist. 187. The first motion had been for a resolution without this exception, that no place of profit should be executed by the members of either house.

[f] Whitelock, p. 118, 120. It was opposed by him, but supported by Pierpoint, who carried it up to the lords. The lords were chiefly of the presbyterian party; though Say, Wharton, and a few more, were connected with the independents. They added a proviso to the ordinance raising forces to be commanded by Fairfax, that no officer refusing the covenant should be capable of serving, which was thrown out in the lower house. But another proviso was carried in the commons by 82 to 63, that the officers, though appointed by the general, should be approved by both houses of parliament. Cromwell was one of the tellers for the minority. Commons' Journals, Feb. 7 and 13, 1645.

In the original ordinance the members of both houses were excluded during the war; but in the second, which was carried, the measure was not made prospective. This, which most historians have overlooked, is well pointed out by Mr. Godwin. By virtue of this alteration, many officers were elected in the course of 1645 and 1646; and the effect, whatever might be designed, was very advantageous to the republican and independent factions.

[g] Whitelock, p. 145.

the king and the monarchy, but over the parliament and the nation.

Desperate condition of the king's affairs.

It does not appear to me that a brave and prudent man, in the condition of Charles I., had, up to that unfortunate day, any other alternative than a vigorous prosecution of the war, in hope of such decisive success as, though hardly within probable calculation, is not unprecedented in the changeful tide of fortune. I cannot therefore blame him either for refusing unreasonable terms of accommodation or for not relinquishing altogether the contest. But after his defeat at Naseby his affairs were, in a military sense, so irretrievable that, in prolonging the war with as much obstinacy as the broken state of his party would allow, he displayed a good deal of that indifference to the sufferings of the kingdom and of his own adherents which has been sometimes imputed to him. There was, from the hour of that battle, one only safe and honourable course remaining. He justly abhorred to reign, if so it could be named, the slave of parliament, with the sacrifice of his conscience and his friends. But it was by no means necessary to reign at all. The sea was for many months open to him; in France, or still better in Holland, he would have found his misfortunes respected, and an asylum in that decent privacy which becomes an exiled sovereign. Those very hopes which he too fondly cherished, and which lured him to destruction—hopes of regaining power through the disunion of his enemies—might have been entertained with better reason, as with greater safety, in a foreign land. It is not perhaps very probable that he would have been restored; but his restoration in such circumstances seems less desperate than through any treaty that he could conclude in captivity at home.[h]

Whether any such thoughts of abandoning a hopeless contest were ever entertained by the king during this particular period, it is impossible to pronounce; we should infer the contrary from all his actions. It must

h [It was the opinion of Montreuil that the plan of flight which the king was meditating before he took refuge with the Scots "is by far the best, and in every point of view necessary; for the parliament will by that time have fallen into dissensions, and the throne will be far more easily restored, if the king come back to it from abroad, than if he were to issue from a prison. I only fear that flight will, perhaps, be no longer possible." Jan. 10, 1646. Raumer, p. 340.]

be said that many of his counsellors seem to have been as pertinacious as himself, having strongly imbibed the same sanguine spirit, and looking for deliverance, according to their several fancies, from the ambition of Cromwell or the discontent of the Scots. But, whatever might have been the king's disposition, he would not have dared to retire from England. That sinister domestic rule to which he had so long been subject controlled every action. Careless of her husband's happiness, and already attached probably to one whom she afterwards married, Henrietta longed only for his recovery of a power which would become her own.[i] Hence, while she constantly laid her injunctions on Charles never to concede anything as to the militia or the Irish catholics, she became desirous,[k] when no other means presented itself, that he should sacrifice what was still nearer to his heart, the episcopal church-government. The queen-regent of France, whose sincerity in desiring the king's restoration there can be no ground to deny,[k] was equally persuaded that he could hope for it on no

[i] Whether there are sufficient grounds for concluding that Henrietta's connexion with Jermyn was criminal I will not pretend to decide; though Warburton has settled the matter in a very summary style. See one of his notes on Clarendon, vol. vii. p. 636. But I doubt whether the bishop had authority for what he there says, though it is likely enough to be true. See also a note of lord Dartmouth on Burnet, i. 63.

[k] Clarendon speaks often in his History, and still more frequently in his private letters, with great resentment of the conduct of France, and sometimes of Holland, during our civil wars. I must confess that I see nothing to warrant this. The States-General, against whom Charles had so shamefully been plotting, interfered as much for the purpose of mediation as they could with the slightest prospect of success, and so as to give offence to the parliament (Rushworth Abridged, v. 567; Baillie, ii. 78; Whitelock, 141, 148; Harris's Life of Cromwell, 246); and as to France, though Richelieu had instigated the Scots malecontents, and possibly those of England, yet after his death, in 1642, no sort of suspicion ought to lie on the French government; the whole conduct of Anne of Austria having been friendly, and both the mission of Harcourt in 1643, and the present negotiations of Montreuil and Bellievre, perfectly well intended. That Mazarin made promises of assistance which he had no design, nor perhaps any power, to fulfil, is true; but this is the common trick of such statesmen, and argues no malevolent purpose. But Hyde, out of his just dislike of the queen, hated all French connexions; and his passionate loyalty made him think it a crime, or at least a piece of base pusillanimity, in foreign states, to keep on any terms with the rebellious parliament. The case was altered after the retirement of the regent Anne from power: Mazarin's latter conduct was, as is well known, exceedingly adverse to the royal cause.

The account given by Mr. D'Israeli of Tabran's negotiations in the fifth volume of his Commentaries on the Reign of Charles I., though it does not contain anything very important, tends to show Mazarin's inclination towards the royal cause in 1644 and 1645.

less painful conditions. They reasoned of course very plausibly from the great precedent of flexible consciences, the reconciliation of Henrietta's illustrious father to the catholic church. As he could neither have regained his royal power nor restored peace to France without this compliance with his subjects' prejudices, so Charles could still less expect, in circumstances by no means so favourable, that he should avoid a concession, in the eyes of almost all men but himself, of incomparably less importance. It was in expectation, or perhaps rather in the hope, of this sacrifice that the French envoy Montreuil entered on his ill-starred negotiation for the king's taking shelter with the Scots army. And it must be confessed that several of his best friends were hardly less anxious that he should desert a church he could not protect.[m] They doubted not, reasoning from their own characters, that he would ultimately give way. But that Charles, unchangeably resolved on this head,[n] should have put himself in the power of men fully as bigoted as himself (if he really conceived that the Scots presbyterians would shed their blood to re-establish the prelacy they abhorred), was an additional proof of that delusion which made him fancy that no government could be established without his concurrence; unless indeed we should rather consider it as one of those desperate courses into which he who can foresee nothing but evil from every calculable

The king throws himself into the hands of the Scots.

[m] Colepepper writes to Ashburnham, in February, 1646, to advance the Scots treaty with all his power. "It is the only way left to save the crown and the kingdom; all other tricks will deceive you. . . . It is no time to dally on distinctions and criticisms. All the world will laugh at them when a crown is in question." Clar. Papers, ii. 207.

The king had positively declared his resolution not to consent to the establishment of presbytery. This had so much disgusted both the Scots and English presbyterians (for the latter had been concerned in the negotiation), that Montreuil wrote to say he thought they would rather make it up with the independents than treat again. "De sorte qu'il ne faut plus marchander, et que V. M. se doit hâter d'envoyer aux deux parlemens son consentiment aux trois propositions d'Uxbridge; ce qu'étant fait, elle sera en sureté dans l'armée d'Ecosse." (16th Jan. 1640.) P. 211.

[n] "I assure you," he writes to Capel, Hopton, &c., Feb. 2, 1646, "whatever paraphrases or prophecies may be made upon my last message (pressing the two houses to consent to a personal treaty), I shall never part with the church, the essentials of my crown, or my friends." P. 206. Baillie could not believe the report that the king intended to take refuge in the Scots army, as "there would be no shelter there for him, unless he would take the covenant, and follow the advice of his parliament. Hard pills to be swallowed by a wilful and an unadvised prince." Vol. ii. p. 203.

line of action will sometimes plunge at a venture, borrowing some ray of hope from the uncertainty of their consequences.[o]

It was an inevitable effect of this step that the king surrendered his personal liberty, which he never afterwards recovered. Considering his situation, we may at first think the parliament tolerably moderate in offering nearly the same terms of peace at Newcastle which he had rejected at Uxbridge; the chief difference being that the power of the militia, which had been demanded for commissioners nominated and removable by the two houses during an indefinite period, was now proposed to reside in the two houses for the space of twenty years; which rather more unequivocally indicated their design of making the parliament perpetual.[p] But in fact they had so abridged the royal prerogative by their former propositions, that, preserving the decent semblance of monarchy, scarce anything farther could be exacted. The king's circumstances were, however, so altered that by persisting in his refusal of those propositions he excited a natural indignation at his obstinacy in men who felt their own right (the conqueror's right) to dictate terms at pleasure. Yet this might have had a nobler character of firmness if, during all the tedious parleys of the last three years of his life, he had not by tardy and partial concessions given up so much of that for which he contended, as rather to appear like a pedler haggling for the best bargain than a sovereign unalterably determined by conscience and public spirit. We must, however, forgive much to one placed in such unparalleled difficulties. Charles had to contend, during his unhappy residence at Newcastle, not merely with revolted sub-

[o] Not long after the king had taken shelter with the Scots he wrote a letter to Ormond, which was intercepted, wherein he assured him of his expectation that their army would join with his, and act in conjunction with Montrose, to procure a happy peace and the restoration of his rights. Whitelock, p. 208. Charles had bad luck with his letters, which fell, too frequently for his fame and interests, into the hands of his enemies. But who, save this most ill-judging of princes, would have entertained an idea that the Scots presbyterian army would co-operate with Montrose, whom they abhorred, and very justly, for his treachery and cruelty, above all men living?

[p] Parl. Hist. 499. Whitelock, 215, 218. It was voted, 17th June, that after these twenty years the king was to exercise no power over the militia without the previous consent of parliament, who were to pass a bill at any time respecting it, if they should judge the kingdom's safety to be concerned, which should be valid without the king's assent. Commons' Journal.

jects in the pride of conquest, and with bigoted priests, as blindly confident in one set of doubtful propositions as he was in the opposite, but with those he had trusted the most and loved the dearest. We have in the Clarendon State Papers a series of letters from Paris, written, some by the queen, others jointly by Colepepper, Jermyn, and Ashburnham, or the two former, urging him to sacrifice episcopacy, as the necessary means of his restoration. We have the king's answers, that display in an interesting manner the struggles of his mind under this severe trial.[q] No candid reader, I think, can doubt that a serious sense of obligation was predominant in Charles's persevering fidelity to the English church. For though he often alleges the incompatibility of presbyterianism with monarchy, and says very justly, "I am most confident that religion will much sooner regain the militia than the militia will religion,"[r] yet these arguments seem rather intended to weigh with those who slighted his scruples than the paramount motives of his heart. He could hardly avoid perceiving that, as Colepepper told him in his rough style, the question was whether he would choose to be a king of presbytery or no king. But

Charles's struggles to preserve episcopacy, against the advice of the queen and others.

[q] P. 248. "Show me any precedent," he says in another place, "wherever presbyterian government and regal was together without perpetual rebellions, which was the cause that necessitated the king my father to change that government in Scotland. And even in France, where they are but on tolerance, which in likelihood shall cause moderation, did they ever sit still so long as they had power to rebel? And it cannot be otherwise; for the ground of their doctrine is anti-monarchial." P. 260. See also p. 273.

[r] "The design is to unite you with the Scots nation and the presbyterians of England against the anti-monarchial party, the independents. . . . . If by conscience it is intended to assert that episcopacy is jure divino exclusive, whereby no protestant, or rather Christian, church can be acknowledged for such without a bishop, we must therein crave leave only to differ. And if we be in an error, we are in good company, there not being, as we have cause to believe, six persons of the protestant religion of the other opinion. . . . Come, the question in short is, whether you will choose to be a king of presbytery, or no king, and yet presbytery or perfect independency to be?" P. 263. They were, however, as much against his giving up the militia or his party, as in favour of his abolishing episcopacy.

Charles was much to be pitied throughout all this period; none of his correspondents understood the state of affairs so well as himself: he was with the Scots, and saw what they were made of, while the others fancied absurdities through their own private self-interested views. It is very certain that by sacrificing episcopacy he would not have gained a step with the parliament: and as to reigning in Scotland alone, suspected, insulted, degraded, this would, perhaps, just have been possible for himself, but neither Henrietta nor her friends would have found an asylum there.

the utmost length which he could prevail on himself to go was to offer the continuance of the presbyterian discipline, as established by the parliament, for three years, during which a conference of divines might be had, in order to bring about a settlement. Even this he would not propose without consulting two bishops, Juxon and Duppa, whether he could lawfully do so. They returned a very cautious answer, assenting to the proposition as a temporary measure, but plainly endeavouring to keep the king fixed in his adherence to the episcopal church.[s]

Pressed thus on a topic so important above all others in his eyes, the king gave a proof of his sincerity by greater concessions of power than he had ever intended. He had some time before openly offered to let the parliament name all the commissioners of the militia for seven years, and all the officers of state and judges to hold their places for life.[t] He now empowered a secret agent in London, Mr. William Murray, privately to sound the parliamentary leaders, if they would consent to the establishment of a moderated episcopacy after three or five years, on condition of his departing from the right of the militia during his whole life.[u] This dereliction of the main ground of contest brought down the queen's indignation on his head. She wrote several letters, in an imperious and unfeeling tone, declaring that she would never set her foot in England as long as the parliament should exist.[x] Jermyn and Colepepper

[s] Juxon had been well treated by the parliament, in consequence of his prudent abstinence from politics, and residence in their quarters. He dates his answer to the king from his palace at Fulham. He was, however, dispossessed of it not long after by virtue of the ordinance directing the sale of bishops' lands, Nov. 16, 1646. Parl. Hist. 528. A committee was appointed, Nov. 2, 1646, to consider of a fitting maintenance to be allowed the bishops, both those who had remained under the parliament, and those who had deserted it. Journals. I was led to this passage by Mr. Godwin, Hist. of Commonwealth, ii. 250. Whether anything farther was done I have not observed. But there is an order in the Journals, 1st May, 1647, that, whereas divers of the late tenants of Dr. Juxon, late bishop of London, have refused to pay the rents or other sums of money due to him as bishop of London, at or before the 1st of November last, the trustees of bishops' lands are directed to receive the same, and pay them over to Dr. Juxon. Though this was only justice, it shows that justice was done, at least in this instance, to a bishop. Juxon must have been a very prudent and judicious man, though not learned; which probably was all the better.

[t] Jan. 29, 1646. Parl. Hist. 436. Whitelock says, "Many sober men and lovers of peace were earnest to have complied with what the king proposed; but the major part of the house was contrary, and the new-elected members joined those who were averse to compliance." P. 207.

[u] Clar. Papers, p. 275.

[x] Clar. Papers, p. 294, 297, 300. She had said as much before (King's Cabinet

assumed a style hardly less dictatorial in their letters, till Charles withdrew the proposal, which Murray seems never to have communicated.[x] It was indeed the evident effect of despair and a natural weariness of his thorny crown. He now began to express serious thoughts of making his escape,[y] and seems even to hint more than once at a resignation of his government to the prince of Wales. But Henrietta forbade him to think of an escape, and alludes to the other with contempt and indignation.[z] With this selfish and tyrannical woman, that life of exile and privacy which religion and letters would have rendered tolerable to the king, must have been spent in hardly less bitterness than on a dishonoured throne. She had displayed in France as little virtue as at home: the small resources, which should have been frugally dispensed to those who had lost all for the royal cause, were squandered upon her favourite and her French servants.[a] So totally had she abandoned all regard to English interests, that Hyde and Capel, when retired to Jersey, the governor of which, sir Edward Carteret, still held out for the king, dis-

Bad conduct of the queen.

Opened, p. 28); so that this was not a burst of passion. "Conservez-vous la militia," she says in one place (p. 271), "et n'abandonnez jamais; et *par cela tout reviendra*." Charles, however, disclaimed all idea of violating his faith in case of a treaty (p. 273); but observed as to the militia, with some truth, that "the retaining of it is not of so much consequence—I am far from saying none—as is thought, without the concurrence of other things; because the militia here is not, as in France and other countries, a formed powerful strength; but it serves more to hold off ill than to do much good. And certainly if the pulpits teach not obedience (which will never be, if presbyterian government be absolutely settled), the crown will have little comfort of the militia." P. 296.

[x] P. 301. [z] P. 313.

[a] P. 245, 247, 278, 314. In one place he says that he will go to France *to clear his reputation to the queen*; p. 265. He wrote in great distress of mind to Jermyn and Colepepper, on her threatening to retire from all business into a monastery, in consequence of his refusal to comply with her wishes: p. 270. See also Montreuil's Memoir in Thurloe's State Papers, i. 85, whence it appears that the king had thoughts of making his escape in Jan. 1647.

[b] "For the proposition to Bellievre (a French agent at Newcastle, after Montreuil's recall), I hate it. If any such thing should be made public, you are undone; your enemies will make a malicious use of it. Be sure you never own it again in any discourse, otherwise than as intended as a foil, or an hyperbole, or any other ways, except in sober earnest," &c. p. 304. The queen and her counsellors, however, seem afterwards to have retracted in some measure what they had said about his escape; and advised that, if he could not be suffered to go into Scotland, he would try Ireland or Jersey; p. 312.

Her dislike to the king's escape showed itself, according to Clarendon, vi. 192, even at a time when it appeared the only means to secure his life, during his confinement in the Isle of Wight. Some may suspect that Henrietta had consoled herself too well with lord Jermyn to wish for her husband's return.

[c] P. 344.

covered a plan formed by the queen and Jermyn to put that island into the hands of France.[d] They were exceedingly perplexed at this discovery, conscious of the impossibility of defending Jersey, and yet determined not to let it be torn away from the sovereignty of the British crown. No better expedient occurred than, as soon as the project should be ripe for execution, to despatch a message "to the earl of Northumberland or some other person of honour," asking for aid to preserve the island. This was of course, in other words, to surrender it into the power of the parliament, which they would not name even to themselves. But it was evidently more consistent with their loyalty to the king and his family than to trust the good faith of Mazarin. The scheme, however, was abandoned, for we hear no more of it.

It must, however, be admitted at the present day, that there was no better expedient for saving the king's life, and some portion of the royal authority for his descendants (a frank renunciation of episcopacy perhaps only excepted), than such an abdication, the time for which had come before he put himself into the hands of the Scots. His own party had been weakened, and the number of his well-wishers diminished, by something more than the events of war. The last unfortunate year had, in two memorable instances, revealed fresh proofs of that culpable imprudence, speaking mildly, which made wise and honest men hopeless of any permanent accommodation. At the battle of Naseby copies of some letters to the queen, chiefly written about the time of the treaty of Uxbridge, and strangely preserved, fell into the hands of the enemy, and were instantly published.[e] No other losses

Publication of letters taken at Naseby.

[d] Clar. Papers, p. 279.

[e] Clarendon and Hume inveigh against the parliament for this publication; in which they are of course followed by the whole rabble of Charles's admirers. But it could not reasonably be expected that such material papers should be kept back: nor were the parliament under any obligation to do so. The former writer insinuates that they were garbled; but Charles himself never pretended this (see Supplement to Evelyn's Diary, p. 101); nor does there seem any foundation for the surmise. His own friends garbled them, however, after the Restoration: some passages are omitted in the edition of King Charles's Works; so that they can only be read accurately in the original publication, called the King's Cabinet Opened, a small tract in quarto; or in the modern compilations, such as the Parliamentary History, which have copied it. Ludlow says he has been informed that some of the letters taken at Naseby were suppressed by those intrusted with them, who since the king's restoration

of that fatal day were more injurious to his cause. Besides many proofs of a contemptible subserviency to one justly deemed irreconcilable to the civil and religious interests of the kingdom, and many expressions indicating schemes and hopes inconsistent with any practicable peace, and especially a design to put an end to the parliament,[f] he gave her power to treat with the English catholics, promising to take away all penal laws against them as soon as God should enable him to do so, in consideration of such powerful assistance as might deserve so great a favour, and enable him to effect it.[g] Yet it

have been rewarded for it. Memoirs, i. 156. But I should not be inclined to believe this.

There is, however, an anecdote which may be mentioned in this place: a Dr. Hickman, afterwards bishop of Derry, wrote in 1690 the following letter to Sprat, bishop of Rochester, a copy of which, in Dr. Birch's handwriting, may be found in the British Museum. It was printed by him in the Appendix to the 'Inquiry into the Share K. Charles I. had in Glamorgan's Transactions,' and from thence by Harris in his Life of Charles I. p. 144.

'My Lord,

"Last week Mr. Bennet [a bookseller] left with me a manuscript of letters from king Charles I. to his queen; and said it was your lordship's desire and Dr. Pelling's that my lord Rochester should read them over, and see what was fit to be left out in the intended edition of them. Accordingly, my lord has read them over, and upon the whole matter says he is very much amazed at the design of printing them, and thinks that the king's enemies could not have done him a greater discourtesy. He showed me many passages which detract very much from the reputation of the king's prudence, and something from his integrity; and in short he can find nothing throughout the whole collection but what will lessen the character of the king and offend all those who wish well to his memory. He thinks it very unfit to expose any man's conversation and familiarity with his wife, but especially that king's; for it was apparently his blind side, and his enemies gained great advantage by showing it. But my lord hopes his friends will spare him; and therefore he has ordered me not to deliver the book to the bookseller, but put it into your lordship's hands; and when you have read it, he knows you will be of his opinion. If your lordship has not time to read it all, my lord has turned down some leaves where he makes his chief objections. If your lordship sends any servant to town, I beg you will order him to call here for the book, and that you would take care about it."

Though the description of these letters answers perfectly to those in the King's Cabinet Opened, which certainly "detract much from the reputation of Charles's prudence, and something from his integrity," it is impossible that Rochester and the others could be ignorant of so well-known a publication; and we must consequently infer that some letters injurious to the king's character have been suppressed by the caution of his friends.

[f] The king had long entertained a notion, in which he was encouraged by the attorney-general Herbert, that the act against the dissolution of the parliament without its own consent was void in itself. Life of Clarendon, p. 86. This high monarchical theory of the nullity of statutes in restraint of the prerogative was never thoroughly eradicated till the Revolution, and in all contentions between the crown and parliament destroyed the confidence without which no accommodation could be durable.

[g] "There is little or no appearance but that this summer will be the hottest for war of any that hath been yet; and be confident that, in making peace, I shall

was certain that no parliament, except in absolute duress, would consent to repeal these laws. To what sort of victory therefore did he look? It was remembered that, on taking the sacrament at Oxford some time before, he had solemnly protested that he would maintain the protestant religion of the church of England, without any connivance at popery. What trust could be reposed in a prince capable of forfeiting so solemn a pledge? Were it even supposed that he intended to break his word with the catholics, after obtaining such aid as they could render him, would his insincerity be less flagrant?[h]

These suspicions were much aggravated by a second discovery that took place soon afterwards, of a secret treaty between the earl of Glamorgan and the confederate Irish catholics, not merely promising the repeal of the penal laws, but the establishment of their religion in far the greater part of Ireland.[i] Discovery of Glamorgan's treaty.

ever show my constancy in adhering to bishops and all our friends, not forgetting to put a short period to this perpetual parliament." King's Cabinet Opened, p. 7. "It being presumption, and no piety, so to trust to a good cause as not to use all lawful means to maintain it, I have thought of one means more to furnish thee with for my assistance than hitherto thou hast had: it is, that I give thee power to promise in my name, to whom thou thinkest most fit, that I will take away all the penal laws against the Roman catholics in England as soon as God shall enable me to do it; so as by their means, or in their favours, I may have so powerful assistance as may deserve so great a favour and enable me to do it. But if thou ask what I call that assistance, I answer that, when thou knowest what may be done for it, it will be easily seen if it deserve to be so esteemed. I need not tell thee what secrecy this business requires; yet this I will say, that this is the greatest point of confidence I can express to thee; for it is no thanks to me to trust thee in anything else but in this, which is the only point of difference in opinion betwixt us: and yet I know thou wilt make as good a bargain for me, even in this, as if thou wert a protestant." Id. ibid. "As to my calling those at London a parliament, I shall refer thee to Digby for particular satisfaction; this in general—if there had been but two, besides myself, of my opinion, I had not done it; and the argument that prevailed with me was, that the calling did no ways acknowledge them to be a parliament, upon which condition and construction I did it, and no otherwise, and accordingly it is registered in the council-books, with the council's unanimous approbation." Id. p. 4. The one councillor who concurred with the king was secretary Nicholas. Supplement to Evelyn's Memoirs, p. 90.

[h] The queen evidently suspected that he might be brought to abandon the catholics. King's Cabinet Opened, p. 30, 31. And, if fear of her did not prevent him, I make no question that he would have done so, could he but have carried his other points.

[i] Parl. Hist. 428; Somers Tracts, v. 542. It appears by several letters of the king, published among those taken at Naseby, that Ormond had power to promise the Irish a repeal of the penal laws and the use of private chapels, as well as a suspension of Poyning's law. King's Cabinet Opened, p. 16, 19; Rushw. Abr. v. 589. Glamorgan's treaty granted them all the churches, with the revenues thereof, of which they had at any time since October, 1641, been in possession; that is, the re-establishment of their religion: they, on the other hand, were to furnish

The marquis of Ormond, as well as lord Digby, who happened to be at Dublin, loudly exclaimed against Glamorgan's presumption in concluding such a treaty, and committed him to prison on a charge of treason. He produced two commissions from the king, secretly granted without any seal or the knowledge of any minister, containing the fullest powers to treat with the Irish, and promising to fulfil any conditions into which he should enter. The king, informed of this, disavowed Glamorgan; and asserted in a letter to the parliament that he had merely a commission to raise men for his service, but no power to treat of anything else, without the privity of the lord-lieutenant, much less to capitulate anything concerning religion or any property belonging either to church or laity.[k] Glamorgan, however, was soon released, and lost no portion of the king's or his family's favour.

This transaction has been the subject of much his-

a very large army to the king in England.

k Rushw. Abr. v. 582, 594. This, as well as some letters taken on lord Digby's rout at Sherborne about the same time, made a prodigious impression. "Many good men were sorry that the king's actions agreed no better with his words; that he openly protested before God with horrid imprecations that he endeavoured nothing so much as the preservation of the protestant religion, and rooting out of popery; yet in the mean time, underhand, he promised to the Irish rebels an abrogation of the laws against them, which was contrary to his late expressed promises in these words, 'I will never abrogate the laws against the papists.' And again he said, 'I abhor to think of bringing foreign soldiers into the kingdom,' and yet he solicited the duke of Lorrain, the French, the Danes, and the very Irish, for assistance." May's Breviate of Hist. of Parliament in Maseres's Tracts, i. 61. Charles had certainly never scrupled (I do not say that he ought to have done so) to make application in every quarter for assistance; and began in 1642 with sending a col. Cochran on a secret mission to Denmark, in the hope of obtaining a subsidiary force from that kingdom. There was at least no danger to the national independence from such allies. "We fear this shall undo the king for ever, that no repentance shall ever obtain a pardon of this act, if it be true, from his parliaments." Baillie, ii. 185. Jan. 20, 1646. The king's disavowal had some effect; it seems as if even those who were prejudiced against him could hardly believe him guilty of such an apostasy as it appeared in their eyes. P. 175. And, in fact, though the catholics had demanded nothing unreasonable either in its own nature or according to the circumstances wherein they stood, it threw a great suspicion on the king's attachment to his own faith, when he was seen to abandon altogether, as it seemed, the protestant cause in Ireland, while he was struggling so tenaciously for a particular form of it in Britain. Nor was his negotiation less impolitic than dishonourable. Without depreciating a very brave and injured people, it may be said with certainty that an Irish army could not have had the remotest chance of success against Fairfax and Cromwell; the courage being equal on our side, the skill and discipline incomparably superior. And it was evident that Charles could never reign in England but on a protestant interest.

torical controversy. The enemies of Charles, both in his own and later ages, have considered it as a proof of his indifference at least to the protestant religion, and of his readiness to accept the assistance of Irish rebels on any conditions. His advocates for a long time denied the authenticity of Glamorgan's commissions. But Dr. Birch demonstrated that they were genuine; and, if his dissertation could have left any doubt, later evidence might be adduced in confirmation.[1] Hume, in a very artful

[1] Birch's Inquiry into the Share which King Charles I. had in the Transactions of the Earl of Glamorgan, 1747. Four letters of Charles to Glamorgan, now in the British Museum (Sloane MSS. 4161), in Birch's handwriting, but of which he was not aware at the time of that publication, decisively show the king's duplicity. In the first, which was meant to be seen by Digby, dated Feb. 3, 1646, he blames him for having been drawn to consent to conditions much beyond his instructions.—"If you had advised with my lord-lieutenant; as you promised me, all this had been helped;" and tells him he had commanded as much favour to be shown him as might possibly stand with his service and safety. On Feb. 28 he writes, by a private hand, sir John Winter, that he is every day more and more confirmed in the trust that he had of him. In a third letter, dated April 5, he says, in a cipher, to which the key is given, "you cannot be but confident of my making good all instructions and promises to you and nuncio." The fourth letter is dated April 6, and is in these words:—"Herbert, as I doubt not but you have too much courage to be dismayed or discouraged at the usage like you have had, so I assure you that my estimation of you is nothing diminished by it, but rather begets in me a desire of revenge and reparation to us both (for in this I hold myself equally interested with you), whereupon, not doubting of your accustomed care and industry in my service, I assure you of the continuance of my favour and protection to you, and that in deeds more than in words I shall show myself to be your most assured constant friend. C. R."

These letters have lately been republished by Dr. Lingard, Hist. of Eng. x. note B, from Warner's Hist. of the Civil War in Ireland. The cipher may be found in the Biographia Britannica, under the article BALES. Dr. L. endeavours to prove that Glamorgan acted all along with Ormond's privity: and it must be owned that the expression in the king's last letter about revenge and reparation, which Dr. L. does not advert to, has a very odd appearance.

The controversy is, I suppose, completely at an end; so that it is hardly necessary to mention a letter from Glamorgan, then marquis of Worcester, to Clarendon, after the Restoration, which has every internal mark of credibility, and displays the king's unfairness. Clar. State Pap. ii. 201; and Lingard, ubi supra. It is remarkable that the transaction is never mentioned in the History of the Rebellion. The noble author was, however, convinced of the genuineness of Glamorgan's commission, as appears by a letter to secretary Nicholas:—"I must tell you, I care not how little I say in that business of Ireland, since those strange powers and instructions given to your favourite Glamorgan, which appear to be so inexcusable to justice, piety, and prudence. And I fear there is very much in that transaction of Ireland, both before and since, that you and I were never thought wise enough to be advised with in. Oh! Mr. Secretary, those stratagems have given me more sad hours than all the misfortunes in war which have befallen the king, and look like the effects of God's anger towards us." Id. p. 237. See also a note of Mr. Laing, Hist. of Scotland, iii. 557, for another letter of the king to Glamorgan, from Newcastle, in July, 1646, not less explicit than the foregoing.

and very unfair statement, admitting the authenticity of these instruments, endeavours to show that they were never intended to give Glamorgan any power to treat without Ormond's approbation. But they are worded in the most unconditional manner, without any reference to Ormond. No common reader can think them consistent with the king's story. I do not, however, impute to him any intention of ratifying the terms of Glamorgan's treaty. His want of faith was not to the protestant, but to the catholic. Upon weighing the whole of the evidence, it appears to me that he purposely gave Glamorgan, a sanguine and injudicious man, whom he could easily disown, so ample a commission as might remove the distrust that the Irish were likely to entertain of a negotiation wherein Ormond should be concerned; while, by a certain latitude in the style of the instrument, and by his own letters to the lord-lieutenant about Glamorgan's errand, he left it open to assert, in case of necessity, that it was never intended to exclude the former's privity and sanction. Charles had unhappily long been in the habit of perverting his natural acuteness to the mean subterfuges of equivocal language.

By these discoveries of the king's insincerity, and by what seemed his infatuated obstinacy in refusing terms of accommodation, both nations became more and more alienated from him; the one hardly restrained from casting him off, the other ready to leave him to his fate.[m] This ill opinion of the king forms one apology for that action which has exposed the Scots nation to so much reproach—their delivery of his person to the English parliament. Perhaps,

The king delivered up by the Scots.

[m] Burnet's Mem. of Dukes of Hamilton, 284. Baillie's letters, throughout 1646, indicate his apprehension of the prevalent spirit, which he dreaded as implacable, not only to monarchy, but to presbytery and the Scots nation. "The leaders of the people seem inclined to have no shadow of a king, to have liberty for all religions, a lame Erastian presbytery, to be so injurious to us as to chase us hence with the sword."—148, March 31, 1646. "The common word is, that they will have the king prisoner. Possibly they may grant to the prince to be a duke of Venice. The militia must be absolutely, for all time to come, in the power of the parliament alone," &c. 200. On the king's refusal of the propositions sent to Newcastle, the Scots took great pains to prevent a vote against him: 226. There was still, however, danger of this: 236, Oct. 13, and p. 243. His intrigues with both parties, the presbyterians and independents, were now known; and all sides seem to have been ripe for deposing him: 245. These letters are a curious contrast to the idle fancies of a speedy and triumphant restoration, which Clarendon himself, as well as others of less judgment, seem to have entertained.

if we place ourselves in their situation, it will not appear deserving of quite such indignant censure. It would have shown more generosity to have offered the king an alternative of retiring to Holland; and, from what we now know, he probably would not have neglected the opportunity. But the consequence might have been his solemn deposition from the English throne; and, however we may think such banishment more honourable than the acceptance of degrading conditions, the Scots, we should remember, saw nothing in the king's taking the covenant, and sweeping away prelatic superstitions, but the bounden duty of a Christian sovereign, which only the most perverse self-will induced him to set at nought.[n] They had a right also to consider the interests of his family, which the threatened establishment of a republic in England would defeat. To carry him back with their army into Scotland, besides being equally ruinous to the English monarchy, would have exposed their nation to the most serious dangers. To undertake his defence by arms against England, as the ardent royalists desired, and doubtless the determined republicans no less, would have been, as was proved afterwards, a mad and culpable renewal of the miseries of both kingdoms.[o]

[n] "Though he should swear it," says Baillie, "no man will believe that he sticks upon episcopacy for any conscience." ii. 205. And again: "It is pity that base hypocrisy, when it is pellucid, shall still be entertained. No oaths did ever persuade me that episcopacy was ever adhered to on any conscience." 224. This looks at first like mere bigotry. But, when we remember that Charles had abolished episcopacy in Scotland, and was ready to abolish protestantism in Ireland, Baillie's prejudices will appear less unreasonable. The king's private letters in the Clarendon Papers have convinced me of his conscientiousness about church government; but of this his contemporaries could not be aware.

[o] Hollis maintains that the 'violent party were very desirous that the Scots should carry the king with them, and that nothing could have been more injurious to his interests. If we may believe Berkley, who is much confirmed by Baillie, the presbyterians had secretly engaged to the Scots that the army should be disbanded, and the king brought up to London with honour and safety. Memoirs of sir J. Berkley, in Maseres's Tracts, i. 358. Baillie, ii. 257. This affords no bad justification of the Scots for delivering him up.

"It is very like," says Baillie, "if he had done any duty, though he had never taken the covenant, but permitted it to have been put in an act of parliament in both kingdoms, and given so satisfactory an answer to the rest of the propositions, as easily he might, and sometimes I know he was willing, certainly Scotland had been for him as one man; and the body of England, upon many grounds, was upon a disposition to have so cordially embraced him, that no man, for his life, durst have muttered against his present restitution. But remaining what he was in all his maxims, a full Canterburian, both in matters of religion and state, he still inclined to a new war; and for that end resolved to go to Scot-

He had voluntarily come to their camp; no faith was pledged to him; their very right to retain his person, though they had argued for it with the English parliament, seemed open to much doubt. The circumstance, unquestionably, which has always given a character of apparent baseness to this transaction, is the payment of 400,000*l.* made to them so nearly at the same time that it has passed for the price of the king's person. This sum was part of a larger demand on the score of arrears of pay, and had been agreed upon long before we have any proof or reasonable suspicion of a stipulation to deliver up the king.[p] That the parliament would never have actually paid it in case of a refusal to comply with this requisition, there can be, I presume, no kind of doubt; and of this the Scots must have been fully aware. But whether there were any such secret bargain as had been supposed, or whether they would have delivered him up if there had been no pecuniary expectation in the case, is what I cannot perceive sufficient grounds to pronounce with confidence, though I am much inclined to believe the affirmative of the latter question. And it is deserving of particular observation that the party in the house of commons which sought most earnestly to obtain possession of the king's person, and carried all the votes for payment of money to the Scots, was that which had no further aim than an accommodation with him, and a settlement of the government on the basis of its fundamental laws, though doubtless on terms very derogatory to his prerogative; while those who opposed each part of the negotiation were the zealous enemies of the king, and, in some instances at least, of the monarchy. The Journals bear witness to this.[q]

land. Some great men there pressed the equity of Scotland's protecting of him on any terms. This untimeous excess of friendship has ruined that unhappy prince; for the better party finding the conclusion of the king's coming to Scotland, and thereby their own present ruin, and the ruin of the whole cause, the making the malignants masters of church and state, the drawing the whole force of England upon Scotland for their perjurious violation of their covenant, they resolved by all means to cross that design." P. 253.

[p] The votes for payment of the sum of 400,000*l.* to the Scots are on Aug. 21, 27, and Sept. 1; though it was not fully agreed between the two nations till Dec. 8. Whitelock, 220, 229. But Whitelock dates the commencement of the understanding as to the delivery of the king about Dec. 24 (p. 231). See Commons' Journals; Baillie, ii. 246, 253; Burnet's Memoirs of Hamilton, 293, &c.; Laing, iii. 362; and Mr. Godwin's History of the Commonwealth, ii. 258, a work in which great attention has been paid to the order of time.

[q] Journals, Aug. and Sept.; Godwin, ut i supra; Baillie, ii. passim.

Whatever might have been the consequence of the king's accepting the propositions of Newcastle, his chance of restoration upon any terms was now in all appearance very slender. He had to encounter enemies more dangerous and implacable than the presbyterians. That faction, which from small and insensible beginnings had acquired continued strength, through ambition in a few, through fanaticism in many, through a despair in some of reconciling the pretensions of royalty with those of the people, was now rapidly ascending to superiority. Though still weak in the house of commons, it had spread prodigiously in the army, especially since its new-modelling at the time of the self-denying ordinance.[r] The presbyterians saw with dismay the growth of their own and the constitution's enemies. But the royalists, who had less to fear from confusion than from any settlement that the commons would be brought to make, rejoiced in the increasing disunion, and fondly believed, like their master, that one or other party must seek assistance at their hands.[s]

Growth of the independents and republicans.

The independent party comprehended, besides the members of that religious denomination,[t] a countless

[r] Baillie, who, in Jan. 1644, speaks of the independents as rather troublesome than formidable, and even says, "No man, I know, in either of the houses of any note, is for them" (437); and that "lord Say's power and reputation is none at all;" admits, in a few months, the alarming increase of independency and sectarianism in the earl of Manchester's army; more than two parts in three of the officers and soldiers being with them, and those the most resolute and confident; though they had no considerable force either in Essex's or Waller's army, nor in the assembly of divines or the parliament (ii. 5, 19, 20). This was owing in a great degree to the influence, at that period, of Cromwell over Manchester. "The man," he says, "is a very wise and active head, universally well beloved, as religious and stout; being a known independent, and most of the soldiers who love new ways put themselves under his command" (60).

[s] The independent party, or at least some of its most eminent members, as lord Say and Mr St. John, were in a secret correspondence with Oxford, through the medium of lord Saville, in the spring of 1645, if we believe Hollis, who asserts that he had seen their letters, asking offices for themselves. Mem. of Hollis, sect. 43. Baillie refers this to an earlier period, the beginning of 1644 (i. 427); and I conceive that Hollis has been incorrect as to the date. The king, however, was certainly playing a game with them in the beginning of 1646, as well as with the presbyterians, so as to give both parties an opinion of his insincerity. Clarendon State Papers, 214; and see two remarkable letters written by his order to sir Henry Vane, 226, urging a union, in order to overthrow the presbyterian government.

[t] The principles of the independents are set forth candidly, and even favourably, by Collier, 829; as well as by Neal, ii. 98. For those who are not much acquainted with ecclesiastical distinctions, it may be useful to mention the two essential characteristics of this sect, by which they differed from the presbyterians. The first was, that all

brood of fanatical sectaries, nursed in the lap of presbyterianism, and fed with the stimulating aliment she furnished, till their intoxicated fancies could neither be restrained within the limits of her creed nor those of her discipline.[u] The presbyterian zealots were systematically intolerant. A common cause made toleration the doctrine of the sectaries. About the beginning of the war it had been deemed expedient to call together an assembly of divines, nominated by the parliament, and consisting not only of clergymen, but, according to the presbyterian usage, of lay members, peers as well as commoners, by whose advice a general reformation of the church was to be planned.[x] These were chiefly presbyterian, though a small minority of independents, and a few moderate episcopalians, headed by Selden,[y] gave them much trouble. The general imposition of the covenant, and the substitution of the directory for the common prayer (which was forbidden to be used even in any private family, by an ordinance of August, 1654), seemed to assure the triumph of presby-

Opposition to the presbyterian government.

Toleration.

churches or separate congregations were absolutely independent of each other as to jurisdiction or discipline; whence they rejected all synods and representative assemblies as possessing authority; though they generally admitted, to a very limited degree, the alliance of churches for mutual counsel and support. Their second characteristic was the denial of spiritual powers communicated in ordination by apostolical succession; deeming the call of a congregation a sufficient warrant for the exercise of the ministry. See Orme's Life of Owen for a clear view and able defence of the principles maintained by this party. I must add that Neal seems to have proved that the Independents, as a body, were not systematically adverse to monarchy.

[u] Edwards's Gangræna, a noted book in that age, enumerates one hundred and seventy-six heresies, which however are reduced by him to sixteen heads; and these seem capable of further consolidation. Neal, 219. The house ordered a general fast, Feb. 1647, to beseech God to stop the growth of heresy and blasphemy: Whitelock, 236: a presbyterian artifice to alarm the nation.

[x] Parl. Hist. ii. 1479. They did not meet till July 1, 1643; Rush. Abr. v. 123; Neal, 42; Collier, 823. Though this assembly showed abundance of bigotry and narrowness, they were by no means so contemptible as Clarendon represents them, ii. 423; and perhaps equal in learning, good sense, and other merits, to any lower house of convocation that ever made a figure in England.

[y] Whitelock, 71; Neal, 103. Selden, who owed no gratitude to the episcopal church, was from the beginning of its dangers a steady and active friend, displaying, whatever may have been said of his timidity, full as much courage as could reasonably be expected from a studious man advanced in years. Baillie, in 1641, calls him "the avowed proctor of the bishops," i. 245; and, when provoked by his Erastian opposition in 1646, presumes to talk of his "insolent absurdity," ii. 96. Selden sat in the assembly of divines; and by his great knowledge of the ancient languages and of ecclesiastical antiquities, as well as by his sound logic and calm clear judgment, obtained an undeniable superiority, which he took no pains to conceal.

terianism, which became complete, in point of law, by an ordinance of February 1646, establishing for three years the Scots model of classes, synods, and general assemblies throughout England.[z] But in this very ordinance there was a reservation which wounded the spiritual arrogance of that party. Their favourite tenet had always been the independency of the church. They had rejected, with as much abhorrence as the catholics themselves, the royal supremacy, so far as it controlled the exercise of spiritual discipline. But the house of commons were inclined to part with no portion of that prerogative which they had wrested from the crown. Besides the independents, who were still weak, a party called Erastians,[a] and chiefly composed of the common

[z] Scobell; Rush. Abr. v. 576; Parl. Hist. iii. 444; Neal, 199. The latter says this did not pass the lords till June 6. But this is not so. Whitelock very rightly opposed the prohibition of the use of the common prayer, and of the silencing episcopal ministers, as contrary to the principle of liberty of conscience avowed by the parliament, and like what had been complained of in the bishops: 226, 239, 281. But, in Sept. 1647, it was voted that the indulgence in favour of tender consciences should not extend to tolerate the common prayer. Id. 274.

[a] The Erastians were named from Erastus, a German physician in the sixteenth century. The denomination is often used in the present age ignorantly, and therefore indefinitely; but I apprehend that the fundamental principle of his followers was this:—That, in a commonwealth where the magistrate professes Christianity, it is not convenient that offences against religion and morality should be punished by the censures of the church, especially by excommunication. Probably he may have gone farther, as Selden seems to have done (Neal, 191), and denied the right of exclusion from church communion, even without reference to the temporal power; but the limited proposition was of course sufficient to raise the practical controversy. The Helvetic divines, Gualter and Bullinger, strongly concurred in this with Erastus: "Contendimus disciplinam esse debere in ecclesiâ, sed satis esse, si ea administretur a magistratu." Erastus, de Excommunicatione, p. 350; and a still stronger passage in p. 379. And it is said that archbishop Whitgift caused Erastus's book to be printed at his own expense. See one of Warburton's notes on Neal. Calvin, and the whole of his school, held, as is well known, a very opposite tenet. See Erasti Theses de Excommunicatione, 4to. 1579.

The ecclesiastical constitution of England is nearly Erastian in theory, and almost wholly so in practice. Every sentence of the spiritual judge is liable to be reversed by a civil tribunal, the court of delegates, by virtue of the king's supremacy over all causes. And, practically, what is called church discipline, or the censures of ecclesiastical governors for offences, has gone so much into disuse, and what remains is so contemptible, that I believe no one, except those who derive a little profit from it, would regret its abolition.

"The most part of the house of commons," says Baillie, ii. 149, "especially the lawyers, whereof there are many, and divers of them very able men, are either half or whole Erastians, believing no church government to be of divine right, but all to be a human constitution, depending on the will of the magistrate." "The pope and king," he says in another place, 196, "were never more earnest for the headship of the church than the plurality of this parliament." See also p. 183; and Whitelock, 169.

lawyers, under the guidance of Selden, the sworn foe of every ecclesiastical usurpation, withstood the assembly's pretensions with success. They negatived a declaration of the divine right of presbyterian government. They voted a petition from the assembly, complaining of a recent ordinance as an encroachment on spiritual jurisdiction, to be a breach of privilege. The presbyterian tribunals were made subject to the appellant control of parliament, as those of the Anglican church had been to that of the crown. The cases wherein spiritual censures could be pronounced, or the sacrament denied, instead of being left to the clergy, were defined by law.[b] Whether from dissatisfaction on this account, or some other reason, the presbyterian discipline was never carried into effect except to a certain extent in London and in Lancashire. But the beneficed clergy throughout England, till the return of Charles II., were chiefly, though not entirely, of that denomination.[c]

This party was still so far predominant, having the strong support of the city of London and its corporation,[d] with almost all the peers who remained in their

b Parl. Hist. 459, et alibi; Rushw. Abr. v. 578, et alibi; Whitelock, 165, 169, 173, 176, et post; Baillie's Letters, passim; Neal, 23, &c. 194, et post; Collier, 841. The assembly attempted to sustain their own cause by counter votes; and, the minority of independents and Erastians having withdrawn, it was carried, with the single dissent of Lightfoot, that Christ had established a government in his church independent of the civil magistrate. Neal, 223.

c Neal, 228. Warburton says, in his note on this passage, that "the presbyterian was *to all intents and purposes* the established religion during the time of the commonwealth." But, as coercive discipline and synodical government are no small intents and purposes of that religion, this assertion requires to be modified, as it has been in my text. Besides which there were many ministers of the independent sect in benefices, some of whom probably had never received ordination. "Both baptists and independents," says a very well-informed writer of the latter denomination "were in the practice of accepting the livings, that is, the temporalities of the church They did not, however, view themselves as pariah ministers and bound to administer all the ordinances of religion to the parish population. They occupied the parochial edifices and received a portion of the tithes for their maintenance; but in all other respects acted according to their own principles." Orme's Life of Owen, 136. This he thinks would have produced very serious evils if not happily checked by the Restoration. "During the commonwealth," he observes afterwards, 245, "no system of church government can be considered as having been properly or fully established. The presbyterians, if any, enjoyed this distinction."

d The city began to petition for the establishment of presbytery, and against toleration of sectaries, early in 1646; and not long after came to assume what seemed to the commons too dictatorial a tone. This gave much offence, and contributed to drive some members into the opposite faction. Neal, 193, 221, 241; Whitelock, 207, 240.

house, that the independents and other sectaries neither opposed this ordinance for its temporary establishment, nor sought anything farther than a toleration for their own worship. The question, as Neal well observes, was not between presbytery and independency, but between presbytery with a toleration and without one.[c] Not merely from their own exclusive bigotry, but from a

[c] Vol. ii. 268. See also 207 and other places. This is a remark that requires attention; many are apt to misunderstand the question. "For this point (toleration) both they and we contend," says Baillie, "tanquam pro aris et focis," ii. 175. "Not only they praise your magistrate" (writing to a Mr. Spang in Holland), "who for policy gives some secret tolerance to divers religions, wherein, as I conceive, your divines preach against them as great sinners, but avow that, by God's command, the magistrate is discharged to put the least discourtesy on any man, Jew, Turk, Papist, Socinian, or whatever, for his religion:" 18. See also 61, and many other passages. "The army" (says Hugh Peters, in a tract entitled A Word for the Army, and Two Words to the People, 1647) "never hindered the state from a state religion, having only wished to enjoy now what the puritans begged under the prelates; when we desire more, blame us, and shame us." In another, entitled .Vox Militaris, the author says, "We did never engage against this platform, nor for that platform, nor ever will, except better informed; and, therefore, if the state establisheth presbytery, we shall never oppose it."

The question of toleration, in its most important shape, was brought at this time before parliament, on occasion of one Paul Best who had written against the doctrine of the trinity. According to the common law, heretics, on being adjudged by the spiritual court, were delivered over to be burned under the writ de hæretico comburendo. This punishment had been inflicted five times under Elizabeth; on Wielmacker and Tor Wort, two Dutch anabaptists, who, like many of that sect, entertained Arian tenets, and were burned in Smithfield in 1575; on Matthew Hammond in 1579. Thomas Lewis in 1582, and Francis Ket in 1588; all burned by Scambler, bishop of Norwich. It was also inflicted on Bartholomew Legat and Edward Wightman, under James, in 1614; the first burned by King, bishop of London, the second by Neyle of Lichfield. A third, by birth a Spaniard, incurred the same penalty; but the compassion of the people showed itself so strongly at Legat's execution, that James thought it expedient not to carry the sentence into effect. Such is the venomous and demoralizing spirit of bigotry, that Fuller, a writer remarkable for good nature and gentleness, expresses his indignation at the pity which was manifested by the spectators of Legat's sufferings. Church Hist. part ii. p. 62. In the present case of Paul Best, the old sentence of fire was not suggested by any one; but an ordinance was brought in, Jan. 1646, to punish him with death. Whitelock, 190. Best made, at length, such an explanation as was accepted; Neal, 214; but an ordinance to suppress blasphemies and heresies as capital offences was brought in. Commons' Journals, April, 1646. The independents gaining strength, this was long delayed; but the ordinance passed both houses, May 2, 1648. Id. 303. Neal, 338, justly observes that it shows the governing presbyterians would have made a terrible use of their power, had they been supported by the sword of the civil magistrate. The denial of the trinity, incarnation, atonement, or inspiration of any book of the Old or New Testament, was made felony. Lesser offences, such as anabaptism, or denying the lawfulness of presbyterian government, were punishable by imprisonment till the party should recant. It was much opposed, especially by Whitelock. The writ de hæretico comburendo, as is well known, was taken away by act of parliament in 1677.

political alarm by no means ungrounded, the presbyterians stood firmly against all liberty of conscience. But in this again they could not influence the house of commons to suppress the sectaries, though no open declaration in favour of indulgence was as yet made. It is still the boast of the independents that they first brought forward the great principles of religious toleration (I mean as distinguished from maxims of political expediency) which had been confined to a few philosophical minds—to sir Thomas More, in those days of his better judgment when he planned his republic of Utopia, to Thuanus, or L'Hospital. Such principles are, indeed, naturally congenial to the persecuted; and it is by the alternate oppression of so many different sects that they have now obtained their universal reception. But the independents also assert that they first maintained them while in power—a far higher praise, which, however, can only be allowed them by comparison. Without invidiously glancing at their early conduct in New England,[f] it must be admitted that the continuance of the penal laws against catholics, the prohibition of the episcopalian worship, and the punishment of one or two anti-trinitarians under Cromwell, are proofs that the tolerant principle had not yet acquired perfect vigour. If the independent sectaries were its earliest advocates, it was the Anglican writers, the school of Chillingworth, Hales, Taylor, Locke, and Hoadley, that rendered it victorious.[g]

[f] "In all New England, no liberty of living for a presbyterian. Whoever there, were they angels for life and doctrine, will essay to set up a different way from them [the independents], shall be sure of present banishment." Baillie, ii. 4; also 17. I am surprised to find a late writer of that country (Dwight's Travels in New England) attempt to extenuate at least the intolerance of the independents towards the quakers who came to settle there; and which, we see, extended also to the presbyterians. But Mr. Orme, with more judgment, observes that the New England congregations did not sufficiently adhere to the principle of independency, and acted too much as a body; to which he ascribes their persecution of the quakers and others. Life of Owen, p. 335. It is certain that the congregational scheme leads to toleration, as the national church scheme is adverse to it, for manifold reasons which the reader will discover.

[g] Though the writings of Chillingworth and Hales are not directly in behalf of toleration, no one could relish them without imbibing its spirit in the fullest measure. The great work of Jeremy Taylor, on the Liberty of Phrophesying, was published in 1647; and, if we except a few concessions to the temper of the times, which are not reconcilable to its general principles, has left little for those who followed him. Mr. Orme admits that the remonstrants of Holland maintained the principles of toleration very early (p. 50); but refers to a tract by

The king, as I have said, and his party cherished too sanguine hopes from the disunion of their opponents.[h] Though warned of it by the parliamentary commissioners at Uxbridge, though, in fact, it was quite notorious and undisguised, they seem never to have comprehended that many active spirits looked to the entire subversion of the monarchy. The king in particular was haunted by a prejudice, natural to his obstinate and undiscerning mind, that he was necessary to the settlement of the nation; so that, if he remained firm, the whole parliament and army must be at his feet. Yet during the negotiations at Newcastle there was daily an imminent danger that the majority of parliament, irritated by his delays, would come to some vote excluding him from the throne. The Scots presbyterians, whatever we may think of their behaviour, were sincerely attached, if not by loyal affection, yet by national pride, to the blood of their ancient kings. They thought and spoke of Charles as of a headstrong child, to be restrained and chastised, but never cast off.[i] But in England he had absolutely no friends among the prevailing party; many

Leonard Busher, an independent, in 1614, as "containing the most enlightened and scriptural views of religious liberty" (p. 99). He quotes other writings of the same sect under Charles I.

h Several proofs of this occur in the Clarendon State Papers. A letter, in particular, from Colepepper to Digby, in Sept. 1645, is so extravagantly sanguine, considering the posture of the king's affairs at that time, that, if it was perfectly sincere, Colepepper must have been a man of less ability than has generally been supposed. Vol. ii. p. 188. Neal has some sensible remarks on the king's mistake in supposing that any party which he did not join must in the end be ruined: p. 268. He had not lost this strange confidence after his very life had become desperate; and told sir John Bowring, when he advised him not to spin out the time at the treaty of Newport, that "any interests would be glad to come in with him." See Bowring's Memoirs in Halifax's Miscellanies. 132.

i Baillie's letters are full of this feeling, and must be reckoned fair evidence, since no man could be more bigoted to presbytery, or more bitter against the royalist party. I have somewhere seen Baillie praised for his mildness. His letters give no proof of it. Take the following specimens:—"Mr. Maxwell of Ross has printed at Oxford so desperately malicious an invective against our assemblies and presbyteries, that, however I could hardly consent to the hanging of Canterbury or of any jesuit, yet I could give my sentence freely against that unhappy man's life."—ii. 99. "God has struck Coleman with death; he fell in an ague, and, after three or four days, expired. It is not good to stand in Christ's way." P. 189.

Baillie's judgment of men was not more conspicuous than his moderation. "Vane and Cromwell are of horrible hot fancies to put all in confusion, but not of any deep reach. St. John and Pierpoint are more stayed, but not great heads." P. 258. The drift of all his letters is, that every man who resisted the jus divinum of presbytery was knave or fool, if not both. They are however eminently serviceable as historical documents.

there were who thought monarchy best for the nation, but none who cared for the king.

This schism, nevertheless, between the parliament and the army was at least in appearance very desirable for Charles, and seemed to afford him an opportunity which a discreet prince might improve to great advantage, though it unfortunately deluded him with chimerical expectations.[k] At the conclusion of the war, which the useless obstinacy of the royalists had protracted till the beginning of 1647,[m] the commons began to take measures for breaking the force of their remaining enemy. They resolved to disband a part of the army, and to send the rest into Ireland.[n] They formed schemes for getting rid of Cromwell, and even made some demur about continuing Fairfax in command.[o] But

[k] "Now for my own particular resolution," he says in a letter to Digby, March 26, 1646, "it is this. I am endeavouring to get to London, so that the conditions may be such as a gentleman may own, and that the rebels may acknowledge me king; being not without hope that I shall be able so to draw either the presbyterians or independents to side with me for extirpating the one or the other, that I shall be really king again." Carte's Ormond, iii. 452; quoted by Mr. Brodie, to whom I am indebted for the passage. I have mentioned already his overture about this time to sir Henry Vane through Ashburnham.

[m] Clarendon, followed by Hume and several others, appears to say that Raglan castle in Monmouthshire, defended by the marquis of Worcester, was the last that surrendered; namely, in August, 1646. I use the expression *appears to say*, because the last edition, which exhibits his real text, shows that he paid this compliment to Pendennis castle in Cornwall, and that his original editors (I suppose to do honour to a noble family) foisted in the name of Raglan. It is true however of neither. The North Welsh castles held out considerably longer; that of Harlech was not taken till April, 1647, which put an end to the war. Whitelock.

Clarendon, still more unyielding than his master, extols the long resistance of his party, and says that those who surrendered at the first summons obtained no better terms than they who made the stoutest defence; as if that were a sufficient justification for prolonging a civil war. In fact, however, they did the king some harm; inasmuch as they impeded the efforts made in parliament to disband the army. Several votes of the commons show this; see the Journals of 12th May and 31st July, 1646.

[n] The resolution to disband Fairfax's regiment next Tuesday at Chelmsford passed 16th May, 1647, by 136 to 115; Algernon Sidney being a teller of the noes. Commons' Journals. In these votes the house, that is the presbyterian majority, acted with extreme imprudence; not having provided for the payment of the army's arrears at the time they were thus disbanding them. Whitelock advised Hollis and his party not to press the disbanding; and on finding them obstinate, drew off, as he tells us, from that connexion, and came nearer to Cromwell. P. 248. This, however, he had begun to do rather earlier. Independently of the danger of disgusting the army, it is probable that, as soon as it was disbanded, the royalists would have been up in arms. For the growth of this discontent, day by day, peruse Whitelock's Journals for March and the three following months, as well as the Parliamentary History.

[o] It was only carried by 159 to 147, March 5, 1647, that the forces should be commanded by Fairfax. But on the 8th

in all measures that exact promptitude and energy, treachery and timidity are apt to enfeeble the resolutions of a popular assembly. Their demonstrations of enmity were however so alarming to the army, who knew themselves disliked by the people, and dependent for their pay on the parliament; that as early as April, 1647, an overture was secretly made to the king, that they would replace him in his power and dignity. He cautiously answered that he would not involve the kingdom in a fresh war, but should ever feel the strongest sense of this offer from the army.[P] Whether they were discontented at the coldness of this reply, or, as is more probable, the offer had only proceeded from a minority of the officers, no further overture was made, till not long afterwards the bold manœuvre of Joyce had placed the king's person in their power.

Intrigues of the army with the king.

His person seized.

The first effect of this military violence was to display the parliament's deficiency in political courage. It contained, we well know, a store of energetic spirits, not apt to swerve from their attachments. But, where two parties are almost equally balanced, the defection, which external circumstances must produce among those timid and feeble men from whom no assembly can be free, even though they should form but a small minority, will of course give a character of cowardice and vacillation to counsels which is imputed to the whole. They immediately expunged, by a majority of 96 to 79, a vote of reprehension passed some weeks before, upon a remonstrance from the army which the presbyterians had highly resented, and gave other proofs of retracing their steps. But the army was not inclined to accept their submission in full discharge

The parliament yield to the army

the house voted, without a division, that no officer under him should be above the rank of a colonel, and that no member of the house should have any command in the army. It is easy to see at whom this was levelled. Commons' Journals. They voted at the same time that the officers should all take the covenant, which had been rejected two years before; and, by a majority of 136 to 108, that they should all conform to the government of the church established by both houses of parliament.

P Clar. State Papers, ii. 365. The army, in a declaration not long after the king fell into their power, June 24, use these expressions:—"We clearly profess that we do not see how there can be any peace to this kingdom, firm or lasting, without a due provision for the rights, quiet, and immunity of his majesty, his royal family, and his late partakers." Parl. Hist. 647.

of the provocation. It had schemes of its own for the reformation and settlement of the kingdom, more extensive than those of the presbyterian faction. It had its own wrongs also to revenge. Advancing towards London, the general and council of war sent up charges of treason against eleven principal members of that party, who obtained leave to retire beyond sea. Here may be said to have fallen the legislative power and civil government of England; which from this hour till that of the Restoration had never more than a momentary and precarious gleam of existence, perpetually interrupted by the sword.

Those who have once bowed their knee to force, must expect that force will be for ever their master. In a few weeks after this submission of the commons to the army, they were insulted by an unruly, tumultuous mob of apprentices, engaged in the presbyterian politics of the city, who compelled them by actual violence to rescind several of their late votes.[q] Trampled upon by either side, the two speakers, several peers, and a great number of the lower house, deemed it somewhat less ignominious, and certainly more politic, to throw themselves on the protection of the army. They were accordingly soon restored to their places, at the price of a more complete and irretrievable subjection to the military power than they had already undergone. Though the presbyterians maintained a pertinacious resistance within the walls of the house, it was evident that the real power of command was gone from them, and that Cromwell with the army must either become arbiters between the king and parliament, or crush the remaining authority of both.[r]

[q] Hollis censures the speakers of the two houses and others who fled to the army from this mob; the riot being "a sudden tumultuous thing of young idle people without design." Possibly this might be the case; but the tumult at the door of the house, 26th July, was such that it could not be divided. Their votes were plainly null, as being made under duress. Yet the presbyterians were so strong in the commons, that a resolution to annul all proceedings during the speaker's absence was lost by 97 to 95, after his return; and it was only voted to repeal them. A motion to declare that the houses, from 26th July to 6th August, had been under a force, was also lost by 78 to 75. Journals, 9th and 17th August. The lords, however, passed an ordinance to this effect; and, after once more rejecting it, the commons agreed on August 20, with a proviso that no one should be called in question for what had been done.

[r] These transactions are best read in the Commons' Journals and the Parliamentary History, and next to those in Whitelock. Hollis relates them with

There are few circumstances in our history which have caused more perplexity to inquirers than the conduct of Cromwell and his friends towards the king in the year 1647. Those who look only at the ambitious and dissembling character of that leader, or at the fierce republicanism imputed to Ireton, will hardly believe that either of them could harbour anything like sincere designs of restoring him even to that remnant of sovereignty which the parliament would have spared. Yet, when we consider attentively the public documents and private memoirs of that period, it does appear probable that their first intentions towards the king were not unfavourable, and so far sincere that it was their project to make use of his name rather than totally to set him aside. But whether by gratifying Cromwell and his associates with honours, and throwing the whole administration into their hands, Charles would have long contrived to keep a tarnished crown on his head, must be very problematical.

Mysterious conduct of Cromwell.

The new gaolers of this unfortunate prince began by treating him with unusual indulgence, especially in permitting his episcopal chaplains to attend him. This was deemed a pledge of what he thought an invaluable advantage in dealing with the army, that they would not insist upon the covenant, which in fact was nearly as odious to them as

Imprudent hopes of the king.

great passion; and Clarendon, as he does everything else that passed in London, very imperfectly. He accounts for the earl of Manchester and the speaker Lenthal's retiring to the army by their persuasion that the chief officers had nearly concluded a treaty with the king, and resolved to have their shares in it. This is a very unnecessary surmise. Lenthal was a poor-spirited man, always influenced by those whom he thought the strongest, and in this instance, according to Ludlow, p. 206, persuaded against his will by Haslerig to go to the army. Manchester indeed had more courage and honour; but he was not of much capacity, and his parliamentary conduct was not systematic. But upon the whole it is obvious, on reading the list of names (Parl. Hist. 757), that the king's friends were rather among those who stayed behind, especially in the lords, than among those who went to the army. Seven of eight peers who continued to sit from 26th July to 6th of August, 1647, were impeached for it afterwards (Parl. Hist. 764), and they were all of the most moderate party. If the king had any previous connexion with the city, he acted very disingenuously in his letter to Fairfax, Aug. 3, while the contest was still pending; wherein he condemns the tumult, and declares his unwillingness that his friends should join with the city against the army, whose proposals he had rejected the day before with an imprudence of which he was now sensible. This letter, as actually sent to Fairfax, is in the Parliamentary History, 734, and may be compared with a rough draft of the same, preserved in Clarendon Papers, 373, from which it materially differs, being much sharper against the city.

to the royalists, though for very different reasons. Charles, naturally sanguine, and utterly incapable in every part of his life of taking a just view of affairs, was extravagantly elated by these equivocal testimonials of good-will. He blindly listened to private insinuations from rash or treacherous friends, that the soldiers were with him; just after his seizure by Joyce. "I would have you to know, sir," he said to Fairfax, "that I have as good an interest in the army as yourself;" an opinion as injudiciously uttered as it was absurdly conceived.*

* Fairfax's Memoirs in Maseres's Collection of Tracts, vol. i. p. 447. "By this," says Fairfax, who had for once found a man less discerning of the times than himself, "I plainly saw the broken reed he leaned on. The agitators had brought the king into an opinion that the army was for him." Ireton said plainly to the king, "Sir, you have an intention to be the arbitrator between the parliament and us; and we mean to be so between your majesty and the parliament." Berkley's Memoirs. Ibid. p. 360.

This folly of the king, if Mrs. Hutchinson is well informed, alienated Ireton, who had been more inclined to trust him than is commonly believed. "Cromwell," she says, "was at that time so incorruptibly faithful to his trust and the people's interest, that he could not be drawn in to practise even his own usual and natural dissimulation on this occasion. His son-in-law Ireton, that was as faithful as he, was not so fully of the opinion, till he had tried it and found to the contrary, but that the king might have been managed to comply with the public good of his people, after he could no longer uphold his own violent will; but upon some discourses with him, the king uttering these words to him, 'I shall play my game as well as I can,' Ireton replied, 'If your majesty have a game, you must give us also the liberty to play ours.' Colonel Hutchinson privately discoursing with his cousin about the communications he had had with the king, Ireton's expressions were these:—'He gave us words, and we paid him in his own coin, when we found he had no real intention to the people's good, but to prevail, by our factions, to regain by art what he had lost in fight.'" P. 274.

It must be said for the king that he was by no means more sanguine or more blind than his distinguished historian and minister. Clarendon's private letters are full of strange and absurd expectations. Even so late as October, 1647, he writes to Berkley in high hopes from the army, and presses him to make no concessions except as to persons. "If they see you will not yield, they must; for sure they have as much or more need of the king than he of them." R. 379. The whole tenor, indeed, of Clarendon's correspondence demonstrates, that, notwithstanding the fine remarks occasionally scattered through his History, he was no practical statesman, nor had any just conception, at the time, of the course of affairs. He never flinched from one principle, not very practicable or rational in the circumstances of the king—that nothing was to be receded from which had ever been demanded. This may be called magnanimity; but no foreign or domestic dissension could be settled if all men were to act upon it, or if all men, like Charles and Clarendon, were to expect that Providence would interfere to support what seems to them the best, that is, their own cause. The following passage is a specimen:—"Truly I am so unfit to bear a part in carrying on this new contention [by negotiation and concession], that I would not, to preserve myself, wife, and children from the lingering death of want by famine (for a sudden death would require no courage), consent to the lessening any part which I take to be in the function of a bishop, or the taking away the smallest prebendary in the church, or to be bound not to endeavour to alter any such alteration." Id. vol. iii. p. 2. Feb. 4, 1648.

These strange expectations account for the ill reception which in the hasty irritation of disappointment he gave to the proposals of the army, when they were actually tendered to him at Hampton Court, and which seems to have eventually cost him his life. These proposals appear to have been drawn up by Ireton, a lawyer by education, and a man of much courage and capacity. He had been supposed, like a large proportion of the officers, to aim at a settlement of the nation under a democratical polity. But the army, even if their wishes in general went so far, which is hardly evident, were not yet so decidedly masters as to dictate a form of government uncongenial to the ancient laws and fixed prejudices of the people. Something of this tendency is discoverable in the propositions made to the king, which had never appeared in those of the parliament. It was proposed that parliaments should be biennial; that they should never sit less than a hundred and twenty days, nor more than two hundred and forty; that the representation of the commons should be reformed, by abolishing small boroughs and increasing the number of members for counties, so as to render the house of commons, as near as might be, an equal representation of the whole. In respect of the militia and some other points, they either followed the parliamentary propositions of Newcastle, or modified them favourably for the king. They excepted a very small number of the king's adherents from the privilege of paying a composition for their estates, and set that of the rest considerably lower than had been fixed by the parliament. They stipulated that the royalists should not sit in the next parliament. As to religion, they provided for liberty of conscience, declared against the imposition of the covenant, and, by insisting on the retrenchment of the coercive jurisdiction of bishops and the abrogation of penalties for not reading the common prayer, left it to be implied that both might continue established.[1] The whole tenor of these propositions was

He rejects the proposals of the army.

[1] Parl. Hist. 738. Clarendon talks of these proposals as worse than any the king had ever received from the parliament; and Hollis says they "dissolved the whole frame of the monarchy." It is hard to see, however, that they did so in a greater degree than those which he had himself endeavoured to obtain as a commissioner at Uxbridge. As to the church, they were manifestly the best that Charles had

in a style far more respectful to the king, and lenient towards his adherents, than had ever been adopted since the beginning of the war. The sincerity indeed of these overtures might be very questionable if Cromwell had been concerned in them; but they proceeded from those elective tribunes called Agitators, who had been established in every regiment to superintend the interests of the army.[u] And the terms were surely as good as Charles had any reason to hope. The severities against his party were mitigated. The grand obstacles to all accommodation, the covenant and presbyterian establishment, were at once removed; or, if some difficulty might occur as to the latter, in consequence of the actual possession of benefices by the presbyterian clergy, it seemed not absolutely insuperable. For the changes projected in the constitution of parliament, they were not necessarily injurious to the monarchy. That parliament should not be dissolved until it had sat a certain time was so salutary a provision, that the triennial act was hardly complete without it.

It is however probable, from the king's extreme tenaciousness of his prerogative, that these were the conditions that he found it most difficult to endure. Having obtained, through sir John Berkley, a sight of the propositions before they were openly made, he expressed much displeasure; and said that, if the army were inclined to close with him, they would never have demanded such hard terms. He seems to have principally objected, at least in words, to the exception of seven unnamed persons from pardon, to the exclusion of his party from the next parliament, and to the want of any articles in favour of the church. Berkley endeavoured to show him that it was not likely that the army, if meaning sincerely, would ask less than this. But the king, still tampering with the Scots, and keeping his

ever seen. As to his prerogative and the power of the monarchy, he was so thoroughly beaten, that no treaty could do him any essential service; and he had, in truth, only to make his election, whether to be the nominal chief of an aristocratical or a democratical republic. In a well-written tract, called Vox Militaris, containing a defence of the army's proceedings and intentions, and published apparently in July, 1647, their desire to preserve the king's rights, according to their notion of them and the general laws of the realm, is strongly asserted.

[u] The precise meaning of this word seems obscure. Some have supposed it to be a corruption of adjutators, as if the modern term adjutant meant the same thing. But I find agitator always so spelled in the pamphlets of the time.

eyes fixed on the city and parliament, at that moment came to an open breach with the army, disdainfully refused the propositions when publicly tendered to him, with such expressions of misplaced resentment and preposterous confidence as convinced the officers that they could neither conciliate nor trust him.[x] This unexpected haughtiness lost him all chance with those proud and republican spirits; and as they succeeded about the same time in bridling the presbyterian party in parliament, there seemed no necessity for an agreement with the king, and their former determinations of altering the frame of government returned with more revengeful fury against his person.[y]

[x] Berkley's Memoirs, 366. He told lord Capel about this time that he expected a war between Scotland and England; that the Scots hoped for the assistance of the presbyterians; and that he wished his own party to rise in arms on a proper conjuncture, without which he could not hope for much benefit from the others. Clarendon, v. 476.

[y] Berkley, 368, &c. Compare the letter of Ashburnham, published in 1648, and reprinted in 1764; also the memoirs of Hollis, Huntingdon, and Fairfax, which are all in Maseres's Collection; also Ludlow, Hutchinson, Clarendon, Burnet's Memoirs of Hamilton, and some despatches in 1647 and 1648, from a royalist in London, printed in the Appendix to the second volume of the Clarendon Papers. This correspondent of secretary Nicholas believes Cromwell and Ireton to have all along planned the king's destruction, and set the levellers on, till they proceeded so violently that they were forced to restrain them. This also is the conclusion of major Huntingdon, in his Reasons for laying down his Commission. But the contrary appears to me more probable.

Two anecdotes, well known to those conversant in English history, are too remarkable to be omitted. It is said by the editor of lord Orrery's Memoirs, as a relation which he had heard from that noble person, that, in a conversation with Cromwell concerning the king's death, the latter told him he and his friends had once a mind to have closed with the king, fearing that the Scots and presbyterians might do so, when one of their spies, who was of the king's bedchamber, gave them information of a letter from his majesty to the queen, sewed up in the skirt of a saddle, and directing them to an inn where it might be found. They obtained the letter accordingly, in which the king said that he was courted by both factions, the Scots presbyterians and the army; that those which bade fairest for him should have him; but he thought he should rather close with the Scots than the other. Upon this, finding themselves unlikely to get good terms from the king, they from that time vowed his destruction. Carte's Ormond, ii. 12.

A second anecdote is alluded to by some earlier writers, but is particularly told in the following words by Richardson, the painter, author of some anecdotes of Pope, edited by Spence:—"Lord Bolingbroke told us, June 12, 1742 (Mr. Pope, lord Marchmont, and myself), that the second earl of Oxford had often told him that he had seen, and had in his hands, an original letter that Charles the First wrote to his queen, in answer to one of hers that had been intercepted, and then forwarded to him; wherein she had reproached him for having made those villains too great concessions, viz., that Cromwell should be lord-lieutenant of Ireland for life without account; that that kingdom should be in the hands of the party, with an army there kept which should know no head but the lieutenant; that Cromwell should have a garter, &c. That in this letter of the king's it was

His flight from Hampton Court.

Charles's continuance at Hampton Court, there can be little doubt, would have exposed him to such imminent risk that, in escaping from thence, he acted on a reasonable principle of self-preservation. He might probably, with due precautions, have reached France or Jersey. But the hastiness of his retreat from Hampton Court giving no time, he fell again into the toils through the helplessness of his situation and the unfortunate counsels of one whom he trusted.[1] The fortitude of his own mind sustained him in this state of captivity and entire seclusion from his friends. No one, however sensible to the infirmities of Charles's disposition and the defects of his understanding, can refuse admiration to that patient firmness and unaided acuteness which he displayed throughout the last and most melancholy year of his life. He had now abandoned all expectation of obtaining any present terms for the church or crown. He proposed, therefore, what he had privately empowered Murray to offer the

said that she should leave him to manage, who was better informed of all circumstances than she could be; but she might be entirely easy as to whatever concessions he should make them; for that he should know in due time how to deal with the rogues, who, instead of a silken garter, should be fitted with a hempen cord. So the letter ended; which answer as they waited for so they intercepted accordingly, and it determined his fate. This letter lord Oxford said he had offered 500*l.* for."

The authenticity of this latter story has been constantly rejected by Hume and the advocates of Charles in general; and for one reason among others, that it looks like a misrepresentation of that told by lord Orrery, which both stands on good authority, and is perfectly conformable to all the memoirs of the time. I have, however, been informed that a memorandum nearly conformable to Richardson's anecdote is extant, in the handwriting of lord Oxford.

It is possible that this letter is the same with that mentioned by lord Orrery; and in that case was written in the month of October. Cromwell seems to have been in treaty with the king as late as September; and advised him, according to Berkley, to reject the proposals of the parliament in that month. Herbert mentions an intercepted letter of the queen (Memoirs, 60); and even his story proves that Cromwell and his party broke off with Charles from a conviction of his dissimulation. See Laing's note, iii. 562; and the note by Strype, therein referred to, on Kennet's Complete Hist. of England, iii. 170, which speaks of a "constant tradition" about this story, and is more worthy of notice, because it was written before the publication of lord Orrery's Memoirs, or of the Richardsoniana.

[1] Ashburnham gives us to understand that the king had made choice of the Isle of Wight previously to his leaving Hampton Court, but probably at his own suggestion. This seems confirmed by the king's letter in Burnet's Mem. of Dukes of Hamilton, 326. Clarendon's account is a romance, with a little mixture, probably, of truth. But Ashburnham's Narrative, published in 1830, proves that he suggested the Isle of Wight in consequence of the king's being forced to abandon a design he had formed of going to London, the Scots commissioners retracting their engagement to support him.

year before, to confirm the presbyterian government for three years, and to give up the militia during his whole life, with other concessions of importance.[a] To preserve the church lands from sale, to shield his friends from proscription, to obtain a legal security for the restoration of the monarchy in his son, were from henceforth the main objects of all his efforts. It was, however, far too late, even for these moderate conditions of peace. Upon his declining to pass four bills tendered to him as preliminaries of a treaty, which, on that very account, besides his objections to part of their contents, he justly considered as unfair, the parliament voted that no more addresses should be made to him, and that they would receive no more messages.[b] He was placed in close and solitary confinement; and at a meeting of the principal officers at Windsor it was concluded to bring him to trial, and avenge the blood shed in the war by an awful example of punishment; Cromwell and Ireton, if either of them had been ever favourable to the king, acceded at this time to the severity of the rest.

Alarming votes against him.

Yet, in the midst of this peril and seeming abandonment, his affairs were really less desperate than they had been; and a few rays of light broke for a time through the clouds that enveloped him. From the hour that the Scots delivered him up at Newcastle they seem to have felt the discredit of such an action, and longed for the opportunity of redeeming their public name. They perceived more and more that a well-disciplined

[a] Parl. Hist. 799.

[b] Jan. 15. This vote was carried by 141 to 92. Id. 831; and see Append. to 2nd vol. of Clar. State Papers. Cromwell was now vehement against the king, though he had voted in his favour on Sept. 22. Journals; and Berkley, 372. A proof that the king was meant to be wholly rejected is, that at this time, in the list of the navy, the expression "his majesty's ship" was changed to "the parliament's ship." Whitelock, 291.

The four bills were founded on four propositions (for which I refer to Hume or the Parliamentary History, not to Clarendon, who has misstated them) sent down from the Lords. The lower house voted to agree with them by 115 to 106; Sidney and Evelyn tellers for the ayes, Martin and Morley for the noes. The increase of the minority is remarkable, and shows how much the king's refusal of the terms offered him in September, and his escape from Hampton Court, had swollen the commonwealth party; to which, by the way, colonel Sidney at this time seems not to have belonged. Ludlow says, that party hoped the king would not grant the four bills: i. 224. The commons published a declaration of their reasons for making no further addresses to the king, wherein they more than insinuate his participation in the murder of his father by Buckingham. Parl. Hist. 847.

army, under a subtle chief inveterately hostile to them, were rapidly becoming masters of England. Instead of that covenanted alliance, that unity in church and state they had expected, they were to look for all the jealousy and dissension that a complete discordance in civil and spiritual polity could inspire. Their commissioners therefore in England, the earl of Lanark, always a moderate royalist, and the earl of Lauderdale, a warm presbyterian, had kept up a secret intercourse with the king at Hampton Court. After his detention at Carisbrook, they openly declared themselves against the four bills proposed by the English parliament, and at length concluded a private treaty with him, by which, on certain terms quite as favourable as he could justly expect, they bound themselves to enter England with an army in order to restore him to his freedom and dignity.[c] This invasion was to be combined with risings in various parts of the country: the presbyterian and royalist, though still retaining much of animosity towards each other, concurring at least in abhorrence of military usurpation; and the common people having very generally returned to that affectionate respect for the king's person, which sympathy for his sufferings, and a sense how little they had been gainers by the change of government, must naturally have excited.[d] The unfortunate issue of the Scots expedition under the duke of Hamilton, and of the various insurrections throughout England, quelled by the vigi-

Scots invasion.

[c] Clarendon, whose aversion to the Scots warps his judgment, says that this treaty contained many things dishonourable to the English nation. Hist. v. 532. The king lost a good deal in the eyes of this uncompromising statesman by the concessions he made in the Isle of Wight. State Papers, 387. I cannot, for my own part, see anything derogatory to England in the treaty; for the temporary occupation of a few fortified towns in the north can hardly be called so. Charles, there is some reason to think, had on a former occasion made offers to the Scots far more inconsistent with his duty to this kingdom.

[d] Clarendon. May. Brevigte of the Hist. of the Parliament, in Maseres's Tracts, i. 113; Whitelock, 307, 317, &c. In a conference between the two houses, July 25, 1648, the commons gave as a reason for insisting on the king's surrender of the militia as a preliminary to a treaty, that such was the disaffection to the parliament on all sides that without the militia they could never be secure Rush. Abr. vi. 444. "The chief citizens of London," says May, 122, "and others called presbyterians, though the presbyterian Scots abominated this army, wished good success to these Scots no less than the malignants did. Whence let the reader judge of the times." The fugitive sheets of this year, such as the Mercurius Aulicus, bear witness to the exulting and insolent tone of the royalists. They chuckle over Fairfax and Cromwell as if they had caught a couple of rats in a trap.

lance and good conduct of Fairfax and Cromwell, is well known. But these formidable manifestations of the public sentiment in favour of peace with the king on honourable conditions, wherein the city of London, ruled by the presbyterian ministers, took a share, compelled the house of commons to retract its measures. They came to a vote, by 165 to 99, that they would not alter the fundamental government by king, lords, and commons;[e] they abandoned their impeachment against seven peers, the most moderate of the upper house, and the most obnoxious to the army;[f] they restored the eleven members to their seats;[g] they revoked their resolution against a personal treaty with the king, and even that which required his assent by certain preliminary articles.[h] In a word, the party for distinction's sake called presbyterian, but now rather to be denominated constitutional, regained its ascendancy. This change in the councils of parliament brought on the treaty of Newport.

The presbyterians regain the ascendant.

The treaty of Newport was set on foot and managed by those politicians of the house of lords who, having long suspected no danger to themselves but from the power of the king, had discovered, somewhat of the latest, that the crown itself was at stake, and that their own privileges were set on the same cast. Nothing was more remote from the intentions of the earl of Northumberland or lord Say than to see themselves pushed from their seats by such upstarts as Ireton and Harrison; and their present mortification afforded a proof how men reckoned wise in their generation become the dupes of their own selfish, crafty, and pusallanimous policy. They now grew anxious to see a treaty concluded with the king. Sensible that it was necessary to anticipate, if possible, the return of Cromwell from the north, they implored him to comply at once with all the

Treaty of Newport.

[e] April 28, 1648. Parl. Hist. 883.

[f] June 6. These peers were the earls of Suffolk, Middlesex, and Lincoln, lords Willoughby of Parham, Berkley, Hunsdon, and Maynard. They were impeached for sitting in the house during the tumults from 26th of July to 6th of August, 1647. The earl of Pembroke, who had also continued to sit, merely because he was too stupid to discover which party was likely to prevail, escaped by truckling to the new powers.

[g] June 8.

[h] See Parl. Hist. 823, 892, 904, 921. 924, 959, 996, for the different votes on this subject, wherein the presbyterians gradually beat the independent or republican party, but with very small and precarious majorities.

propositions of parliament, or at least to yield in the first instance as far as he meant to go.[1] They had not, how-

[1] Clarendon, vi. 155. He is very absurd in imagining that any of the parliamentary commissioners would have been satisfied with "an act of indemnity and oblivion."

That the parliament had some reason to expect the king's firmness of purpose to give way in spite of all his haggling will appear from the following short review of what had been done. 1. At Newmarket, in June, 1642, he absolutely refused the nineteen propositions tendered to him by the lords and commons. 2. In the treaty of Oxford, March, 1643, he seems to have made no concessions, not even promising an amnesty to those he had already excluded from pardon. 3. In the treaty of Uxbridge no mention was made on his side of exclusion from pardon; he offered to vest the militia for seven years in commissioners jointly appointed by himself and parliament, so that it should afterwards return to him, and to limit the jurisdiction of the bishops. 4. In the winter of 1645 he not only offered to disband his forces, but to let the militia be vested for seven years in commissioners to be appointed by the two houses, and afterwards to be settled by bill; also to give the nomination of officers of state and judges pro hâc vice to the houses. 5. He went no farther in substance till May, 1647; when he offered the militia for ten years, as well as great limitations of episcopacy, and the continuance of presbyterian government for three years; the whole matter to be afterwards settled by bill on the advice of the assembly of divines, and twenty more of his own nomination. 6. In his letter from Carisbrook, Nov. 1647, he gave up the militia for his life. This was in effect to sacrifice almost everything as to immediate power; but he struggled to save the church lands from confiscation, which would have rendered it hardly practicable to restore episcopacy in future. His future concessions in the treaty of Newport, though very slowly extorted, were comparatively trifling.

What Clarendon thought of the treaty of Newport may be imagined. "You may easily conclude," he writes to Digby, "how fit a counsellor I am like to be, when the best that is proposed is that which I *could not consent unto to preserve the kingdom from ashes*. I can tell you worse of myself than this; which is, that there may be some reasonable expedients which possibly might in truth restore and preserve all, in which I could bear no part." P. 459. See also p. 351 and 416. I do not divine what he means by this, unless it were the king's abdication. But what he could not have approved was, that the king had no thoughts of dealing sincerely with the parliament in this treaty, and gave Ormond directions to obey all his wife's commands, but not to obey any further orders he might send, nor to be startled at his great concessions respecting Ireland, for they would come to nothing. Carte's Papers, i. 185. See Mr. Brodie's remarks on this, iv. 143-146. He had agreed to give up the government of Ireland for twenty years to the parliament. In his letter sent from Holmby in May, 1647, he had declared that he would give *full* satisfaction with respect to Ireland. But he thus explains himself to the queen:—"I have so couched that article that, if the Irish give me cause, I may interpret it enough to their advantage. For I only say that I will give them (the two houses) full satisfaction as to the management of the war, nor do I promise to continue the war; so that, if I find reason to make a good peace there, my engagement is at an end. Wherefore make this my interpretation known to the Irish." "What reliance," says Mr. Laing, from whom I transcribe this passage (which I cannot find in the Clarendon State Papers quoted by him), "could parliament place at the beginning of the dispute, or at any subsequent period, on the word or moderation of a prince whose solemn and written declarations were so full of equivocation?" Hist. of Scotland, iii. 409. It may here be added that, though Charles had given his parole to colonel Hammond, and had the sentinels removed in consequence, he was engaged during most part of his stay at Carisbrook in schemes for an escape. See Col. Cooke's Narrative, printed with Herbert's Memoirs; and in Rush. Abr. vi. 534. But his enemies were apprised of

ever, mitigated in any degree the rigorous conditions so often proposed; nor did the king during this treaty obtain any reciprocal concession worth mentioning in return for his surrender of almost all that could be demanded. Did the positive adherence of the parliament to all these propositions, in circumstances so perilous to themselves, display less unreasonable pertinacity than that so often imputed to Charles? Or if, as was the fact, the majority which the presbyterians had obtained was so precarious that they dared not hazard it by suggesting any more moderate counsels, what rational security would the treaty have afforded him, had he even come at once into all their requisitions? His real error was to have entered upon any treaty, and still more to have drawn it out by tardy and ineffectual capitulations. There had long been only one course either for safety or for honour, the abdication of his royal office; now probably too late to preserve his life, but still more honourable than the treaty of Newport. Yet though he was desirous to make his escape to France, I have not observed any hint that he had thoughts of resigning the crown; whether from any mistaken sense of obligation, or from an apprehension that it might affect the succession of his son.

There can be no more erroneous opinion than that of such as believe that the desire of overturning the monarchy produced the civil war, rather than that the civil war brought on the former. In a peaceful and ancient kingdom like England the thought of change could not spontaneously arise. A very few speculative men, by the study of antiquity, or by observation of the prosperity of Venice and Holland, might be led to an abstract preference of republican politics; some fanatics might aspire to a Jewish theocracy; but at the meeting of the long parliament we have not the slightest cause to suppose that any party, or any number of persons among its members, had formed what must then have appeared so extravagant a conception.[k] The insuperable distrust

this intention, and even of an attempt to escape by removing a bar of his window, as appears by the letters from the committee of Derby House, Cromwell, and others, to col. Hammond, published in 1,64.

[k] Clarendon mentions an expression that dropped from Henry Martin in conversation, not long after the meeting of the parliament: "I do not think one man wise enough to govern us all." This may doubtless be taken in a sense per-

of the king's designs, the irritation excited by the sufferings of the war, the impracticability, which every attempt at negotiation displayed, of obtaining his acquiescence to terms deemed indispensable, gradually created a powerful faction, whose chief bond of union was a determination to set him aside.[m] What further scheme they had planned is uncertain: none probably in which any number were agreed: some looked to the prince of Wales, others, perhaps, at one time to the elector palatine;[n] but necessity itself must have suggested to

fectly compatible with our limited monarchy. But Martin's republicanism was soon apparent: he was sent to the Tower in August, 1643, for language reflecting on the king. Parl. Hist. 161. A Mr. Chillingworth had before incurred the same punishment for a like offence, December 1, 1641. Nelson, ii. 714. Sir Henry Ludlow, father of the regicide, was also censured on the same account. As the opposite faction grew stronger, Martin was not only restored to his seat, but the vote against him was expunged. Vane, I presume, took up republican principles pretty early; perhaps also Haslerig. With these exceptions, I know not that we can fix on any individual member of parliament the charge of an intention to subvert the constitution till 1646 or 1647.

[m] Pamphlets may be found as early as 1643 which breathe this spirit; but they are certainly rare till 1645 and 1646. Such are 'Plain English,' 1643; 'The Character of an Anti-malignant,' 1645; 'Last Warning to all the Inhabitants of London,' 1647.

[n] Charles Louis, elector palatine, elder brother of the princes Rupert and Maurice, gave cause to suspect that he was looking towards the throne. He left the king's quarters, where he had been at the commencement of the war, and retired to Holland; whence he wrote, as well as his mother, the queen of Bohemia, to the parliament, disclaiming and renouncing prince Rupert, and begging their own pensions might be paid. He came over to London in August, 1644, took the covenant, and courted the parliament. They showed, however, at first, a good deal of jealousy of him; and intimated that his affairs would prosper better by his leaving the kingdom. Whitelock, 101. Rush. Abr. iv. 359. He did not take this hint, and obtained next year an allowance of 8000*l.* per annum. *Id.* 145. Lady Ranelagh, in a letter to Hyde March, 1644, conjuring him, by his regard for lord Falkland's memory, to use all his influence to procure a message from the king for a treaty, adds, "Methinks what I have informed my sister, and what she will inform you, of the posture the prince elector's affairs are in here, should be a motive to hasten away this message." Clar. State Papers, ii. 167. Clarendon himself, in a letter to Nicholas, Dec. 12, 1646 (where he gives his opinion that the independents look more to a change of the king and his line than of the monarchy itself, and would restore the full prerogative of the crown to one of their own choice), proceeds in these remarkable words: "And I pray God they have not such a nose of wax ready for their impression. This it is makes me tremble more than all their discourses of destroying monarchy; and that towards this end they find assistance from those who from their hearts abhor their confusions." P. 308. These expressions seem more applicable by far to the elector than to Cromwell. But the former was not dangerous to the parliament, though it was deemed fit to treat him with respect. In March, 1647, we find a committee of both houses appointed to receive some intelligence which the prince elector desired to communicate to the parliament of great importance to the protestant religion. Whitelock, 241. Nothing farther appears about this intelligence; which looks as if he were merely afraid of being forgotten. He left England in 1649, and died in 1680.

many the idea of a republican settlement. In the new-modelled army of 1645, composed of independents and enthusiasts of every denomination, a fervid eagerness for changes in the civil polity, as well as in religion, was soon found to predominate. Not checked, like the two houses, by attachment to forms, and by the influence of lawyers, they launched forth into varied projects of reform, sometimes judicious, or at least plausible, sometimes wildly fanatical. They reckoned the king a tyrant, whom, as they might fight against, they might also put to death, and whom it were folly to provoke if he were again to become their master. Elated with their victories, they began already in imagination to carve out the kingdom for themselves; and remembered that saying so congenial to a revolutionary army, "that the first of monarchs was a successful leader, the first of nobles were his followers."[o]

Gradual progress of a republican party.

The knowledge of this innovating spirit in the army gave confidence to the violent party in parliament, and increased its numbers by the accession of some of those to whom nature has given a fine sense for discerning their own advantage. It was doubtless swollen through the publication of the king's letters, and his pertinacity in clinging to his prerogative. And the complexion of the house of commons was materially altered by the introduction at once of a large body of fresh members. They had at the beginning abstained from issuing writs to replace those whose death or expulsion had left their seats vacant. These vacancies, by the disabling votes against all the king's party,[p] became so numerous that it seemed a glaring violation of the popular principles to which they appealed to carry on the public business with so maimed a representation of the people. It was, however, plainly impossible to have elections in many parts of the kingdom while the royal army was in strength; and

[o] Baxter's Life, 50. He ascribes the increase of enthusiasm in the army to the loss of its presbyterian chaplains, who left it for their benefices, on the reduction of the king's party and the new-modelling of the troops. The officers then took on them to act as preachers. Id. 54; and Neal, 183. I conceive that the year 1645 is that to which we must refer the appearance of a republican party in considerable numbers, though not yet among the house of commons.

[p] These passed against the royalist members separately, and for the most part in the first months of the war

the change, by filling up nearly two hundred vacancies at once, was likely to become so important, that some feared that the cavaliers, others that the independents and republicans, might find their advantage in it.[q] The latter party were generally earnest for new elections; and carried their point against the presbyterians in September, 1645, when new writs were ordered for all the places which were left deficient of one or both representatives.[r] The result of these elections, though a few persons rather friendly to the king came into the house, was on the whole very favourable to the army. The self-denying ordinance no longer being in operation, the principal officers were elected on every side; and, with not many exceptions, recruited the ranks of that small body which had already been marked by implacable dislike of the king, and by zeal for a total new-modelling of the government.[s] In the summer of 1646 this party had so far obtained the upper hand, that, according to one of our best authorities, the Scots commissioners had all imaginable difficulty to prevent his deposition. In the course of the year 1647 more overt proofs of a design to change the established constitution were given by a party out of doors. A petition was addressed "to the supreme authority of this nation, the commons assembled in parliament." It was voted upon a division that the house dislikes this petition, and cannot approve of its being delivered; and afterwards, by a majority of only 94 to 86, that it was seditious and insolent, and should be burnt by the

[q] The best friends of the parliament were not without fears what the issue of the new elections might be; for though the people durst not choose such as were open enemies to them, yet probably they would such as were most likely to be for a peace on any terms, corruptly preferring the fruition of their estates and sensual enjoyments before the public interest," &c. Ludlow, i. 168. This is a fair confession how little the commonwealth party had the support of the nation.

[r] C. Journals. Whitelock, 168. The borough of Southwark had just before petitioned for a new writ, its member being dead or disabled.

[s] That the house of commons in December, 1645, entertained no views of altering the fundamental constitution, appears from some of their resolutions as to conditions of peace: "That Fairfax should have an earldom, with 5000*l.* a-year; Cromwell and Waller baronies, with half that estate; Essex, Northumberland, and two more, be made dukes; Manchester and Salisbury marquises; and other peers of their party be elevated to higher ranks; Hasterig, Stapylton, and Skipton to have pensions." Parl. Hist. 403. Whitelock, 182. These votes do not speak much for the magnanimity and disinterestedness of that assembly, though it may suit political romancers to declaim about it.

hangman.[t] Yet the first decisive proof, perhaps, which the journals of parliament afford of the existence of a republican party, was the vote of 22nd September, 1647, that they would once again make application to the king for those things which they judged necessary for the welfare and safety of the kingdom. This was carried by 70 to 23.[u] Their subsequent resolution of January 4, 1648, against any further addresses to the king, which passed by a majority of 141 to 91, was a virtual renunciation of allegiance. The lords, after a warm debate, concurred in this vote. And the army had in November, 1647, before the king's escape from Hampton Court, published a declaration of their design for the settlement of the nation under a sovereign representative assembly, which should possess authority to make or repeal laws, and to call magistrates to account.

We are not certainly to conclude that all who, in 1648, had made up their minds against the king's restoration, were equally averse to all regal government. The prince of Wales had taken so active, and, for a moment, so successful a share in the war of that year, that his father's enemies were become his own. Meetings however were held, where the military and parliamentary chiefs discussed the schemes of raising the duke of York, or his younger brother the duke of Glocester, to the throne. Cromwell especially wavered, or pre-

[t] Commons' Journals, May 4 and 18, 1647. This minority were not, in general, republican; but were unwilling to increase the irritation of the army by so strong a vote.

[u] Commons' Journals. Whitelock, 271. Parl. Hist. 781. They had just been exasperated by his evasion of their propositions. Id. 778. By the smallness of the numbers, and the names of the tellers, it seems as if the presbyterian party had been almost entirely absent; which may be also inferred from other parts of the Journals. See October 9, for a long list of absentees. Haslerig and Evelyn, both of the army faction, told the ayes, Martin and sir Peter Wentworth the noes. The house had divided the day before on the question for going into a committee to take this matter into consideration, 84 to 34; Cromwell and Evelyn telling the majority, Wentworth and Rainsborough the minority. I suppose it is from some of these divisions that baron Maseres has reckoned the republican party in the house not to exceed thirty.

It was resolved on Nov. 6, 1647, that the king of England, for the time being, was bound, in justice and by the duty of his office, to give his assent to all such laws as by the lords and commons in parliament shall be adjudged to be for the good of the kingdom, and by them tendered unto him for his assent. But the previous question was carried on the following addition: "And in case the laws so offered unto him shall not thereupon be assented unto by him, that nevertheless they are as valid to all intents and purposes as if his assent had been thereunto had and obtained, which they do insist upon as an undoubted right." Com. Jour.

tended to waver, as to the settlement of the nation; nor is there any evidence, so far as I know, that he had ever professed himself averse to monarchy, till, dexterously mounting on the wave which he could not stem, he led on those zealots who had resolved to celebrate the inauguration of their new commonwealth with the blood of a victim king.[x]

Scheme among the officers of bringing Charles to trial.

It was about the end of 1647, as I have said, that the principal officers took the determination, which had been already menaced by some of the agitators, of bringing the king, as the first and greatest delinquent, to public justice.[y] Too stern and haughty, too confident of the righteousness of their actions, to think of private

[x] Ludlow says that Cromwell, "finding the king's friends grow strong in 1648, began to court the commonwealth's party. The latter told him he knew how to cajole and give them good words when he had occasion to make use of them; whereat, breaking out into a rage, he said they were a proud sort of people, and only considerable in their own conceits." P. 240. Does this look as if he had been reckoned one of them?

[y] Clarendon says that there were many consultations among the officers about the best mode of disposing of the king; some were for deposing him, others for poison or assassination, which, he fancies, would have been put in practice if they could have prevailed on Hammond. But this is not warranted by our better authorities.

It is hard to say at what time the first bold man dared to talk of bringing the king to justice. But in a letter of Baillie to Alexander Henderson, May 19, 1646, he says, "If God have hardened him, so far as I can perceive, this people will strive to have him in their power, and make an example of him; *I abhor to think what they speak of execution*;" ii. 20; published also in Dalrymple's Memorials of Charles I., p. 166. Proofs may also be brought from pamphlets by Lilburne and others in 1647, especially towards the end of that year; and the remonstrance of the Scots parliament, dated Aug. 13, alludes to such language. Rush. Abr. vi. 246. Berkley indeed positively assures us that the resolution was taken at Windsor, in a council of officers, soon after the king's confinement at Carisbrook; and this with so much particularity of circumstance that, if we reject his account, we must set aside the whole of his memoirs at the same time. Maseres' Tracts, i. 383. But it is fully confirmed by an independent testimony. William Allen, himself one of the council of officers and adjutant-general of the army, who, in a letter addressed to Fleetwood, and published in 1659, declares that, after much consultation and prayer at Windsor Castle, in the beginning of 1648, they had "come to a very clear and *joint* resolution that it was their duty to call Charles Stuart, that man of blood, to an account for the blood he had shed, and mischief he had done to his utmost against the Lord's cause and people in these poor nations." This is to be found in Somers' Tracts, vi. 499. The only discrepancy, if it is one, between him and Berkley, is as to the precise time, which the other seems to place in the end of 1647. But this might be lapse of memory in either party; nor is it clear, on looking attentively at Berkley's narration, that he determines the time. Ashburnham says, "For some days before the king's remove from Hampton Court, there was scarcely a day in which several alarms were not brought him by and from several considerable persons, both well-affected to him and likely to know much of what was then in agitation, of the resolution which a violent party in the army had to take away his life. And that such a design there was, there were strong insinuations to persuade." See also his Narrative, published in 1830.

assassination, they sought to gratify their pride by the solemnity and notoriousness, by the very infamy and eventual danger, of an act unprecedented in the history of nations. Throughout the year 1648 this design, though suspended, became familiar to the people's expectation.[a] The commonwealth's men and the levellers, the various sectaries (admitting a few exceptions), grew clamorous for the king's death. Petitions were presented to the commons, praying for justice on all delinquents, from the highest to the lowest.[a] And not long afterwards the general officers of the army came forward with a long remonstrance against any treaty, and insisting that the capital and grand author of their troubles be speedily brought to justice, for the treason, blood, and mischief whereof he had been guilty.[b] This was soon followed by the vote of the presbyterian party, that the answers of the king to the propositions of both houses are a ground for the house to proceed upon for the settlement of the peace of the kingdom,[c] by the violent expulsion, or, as it was called, seclusion, of all the presbyterian members from the house, and the ordinance of a minority, constituting the high court of justice for the trial of the king.[d]

This is finally determined.

Seclusion of presbyterian members.

A very small number among those who sat in this strange tribunal upon Charles I. were undoubtedly capable of taking statesmanlike views of the interests of their party, and might consider his death a politic expedient for consolidating the new settlement. It seemed to involve the army, which had openly abetted the act, and even the nation by its passive consent, in such inexpiable guilt towards the royal family, that neither common prudence nor a sense of shame would permit them to suffer its restoration. But by far the

[a] Somers' Tracts, v. 160, 162.

[a] Sept. 11. Parl. Hist. 1077. May's Breviate in Maseres' Tracts, vol. i. p. 127. Whitelock, 335.

[b] Nov. 17. Parl. Hist. 1077. Whitelock, p. 355. A motion, Nov. 30, that the house do now proceed on the remonstrance of the army, was lost by 125 to 58 (printed 53 in Parl. Hist.). Commons' Journals. So weak was still the republican party. It is indeed remarkable that this remonstrance itself is rather against the king than absolutely against all monarchy; for one of the proposals contained in it is that kings should be chosen by the people, and have no negative voice.

[c] The division was on the previous question, which was lost by 129 to 83

[d] No division took place on any of the votes respecting the king's trial.

greater part of the regicides such considerations were either overlooked or kept in the background. Their more powerful motive was that fierce fanatical hatred of the king, the natural fruit of long civil dissension, inflamed by preachers more dark and sanguinary than those they addressed, and by a perverted study of the Jewish scriptures. They had been wrought to believe, not that his execution would be justified by state necessity or any such feeble grounds of human reasoning, but that it was a bounden duty, which with a safe conscience they could not neglect. Such was the persuasion of Ludlow and Hutchinson, the most respectable names among the regicides; both of them free from all suspicion of interestedness or hypocrisy, and less intoxicated than the rest by fanaticism. "I was fully persuaded," says the former, "that an accommodation with the king was unsafe to the people of England, and unjust and wicked in the nature of it. The former, besides that it was obvious to all men, the king himself had proved, by the duplicity of his dealing with the parliament, which manifestly appeared in his own papers, taken at the battle of Naseby and elsewhere. Of the latter I was convinced by the express words of God's law: 'that blood defileth the land, and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.' (Numbers, c. xxxv. v. 33.) And therefore I could not consent to leave the guilt of so much blood on the nation, and thereby to draw down the just vengeance of God upon us all, when it was most evident that the war had been occasioned by the invasion of our rights and open breach of our laws and constitution on the king's part."* "As for Mr. Hutchinson," says his high-souled consort, "although he was very much confirmed in his judgment concerning the cause, yet, being here called to an extraordinary action, whereof many were of several minds, he addressed himself to God by prayer, desiring the Lord that, if through any human frailty he were led into any error or false opinion in those great transactions, he would open his eyes, and not suffer him to proceed, but that he would confirm his spirit in the

Motives of some of the king's judges.

* Ludlow, i. 267.

truth, and lead him by a right-enlightened conscience; and finding no check, but a confirmation in his conscience that it was his duty to act as he did, he, upon serious debate, both privately and in his addresses to God, and in conferences with conscientious, upright, unbiassed persons, proceeded to sign the sentence against the king. Although he did not then believe but it might one day come to be again disputed among men, yet both he and others thought they could not refuse it without giving up the people of God, whom they had led forth and engaged themselves unto by the oath of God, into the hands of God's and their enemies; and therefore he cast himself upon God's protection, acting according to the dictates of a conscience which he had sought the law to guide; and accordingly the Lord did signalise his favour afterward to him."[f]

Question of his execution discussed.

The execution of Charles I. has been mentioned in later ages by a few with unlimited praise—by some with faint and ambiguous censure—by most with vehement reprobation. My own judgment will possibly be anticipated by the reader of the preceding pages. I shall certainly not rest it on the imaginary sacredness and divine origin of royalty, nor even on the irresponsibility with which the law of almost every country invests the person of its sovereign. Far be it from me to contend that no cases may be conceived, that no instances may be found in history, wherein the sympathy of mankind and the sound principles of political justice would approve a public judicial sentence as the due reward of tyranny and perfidiousness. But we may confidently deny that Charles I. was thus to be singled out as a warning to tyrants. His offences were not, in the worst interpretation, of that atrocious character which calls down the vengeance of insulted humanity, regardless of positive law. His government had been very arbitrary; but it may well be doubted whether any, even of his ministers, could have suffered death for their share in it, without introducing a principle of barbarous vindictiveness. Far from the sanguinary misanthropy of some monarchs, or the revengeful fury of others, he had in no instance dis-

[f] Hutchinson, p. 303.

played, nor does the minutest scrutiny since made into his character entitle us to suppose, any malevolent dispositions beyond some proneness to anger, and a considerable degree of harshness in his demeanour.[g] As for the charge of having caused the bloodshed of the war, upon which, and not on any former misgovernment, his condemnation was grounded, it was as ill-established as it would have been insufficient. Well might the earl of Northumberland say, when the ordinance for the king's trial was before the lords, that the greatest part of the people of England were not yet satisfied whether the king levied war first against the houses, or the houses against him.[h] The fact, in my opinion, was entirely otherwise. It is quite another question whether the parliament were justified in their resistance to the king's legal authority. But we may contend that, when Hotham, by their command, shut the gates of Hull against his sovereign, when the militia was called out in different counties by an ordinance of the two houses, both of which preceded by several weeks any levying of forces for the king, the bonds of our constitutional law were by them and their servants snapped asunder; and it would be the mere pedantry

g The king's manners were not good. He spoke and behaved to ladies with indelicacy in public. See Warburton's Notes on Clarendon, vii. 619; and a passage in Milton's Defensio pro Populo Anglicano, quoted by Harris and Brodie. He once forgot himself so far as to cane the younger sir Henry Vane for coming into a room of the palace reserved for persons of higher rank. Carte's Ormond, i. 356, where other instances are mentioned by that friendly writer. He had in truth none who loved him, till his misfortune softened his temper and excited sympathy.

An anecdote, strongly intimating the violence of Charles's temper, has been rejected by his advocates. It is said that Burnet, in searching the Hamilton papers, found that the king, on discovering the celebrated letter of the Scots covenanting lords to the king of France, was so incensed that he sent an order to sir William Balfour, lieutenant-governor of the Tower, to cut off the head of his prisoner, lord Loudon; but that the marquis of Hamilton, to whom Balfour immediately communicated this, urged so strongly on the king that the city would be up in arms on this violence, that with reluctance he withdrew the warrant. This story is told by Oldmixon, Hist. of the Stuarts, p. 140. It was brought forward on Burnet's authority, and also on that of the duke of Hamilton, killed in 1712, by Dr. Birch, no incompetent judge of historical evidence: it seems confirmed by an intimation given by Burnet himself in his Memoirs of the duke of Hamilton, p. 161. It is also mentioned by Scott of Scotstarvet, a contemporary writer. Harris, p. 350, quotes other authorities, earlier than the anecdote told of Burnet; and upon the whole I think the story deserving credit, and by no means so much to be slighted as the Oxford editor of Burnet has thought fit to do.

h Clement Walker, Hist. of Independency, part ii. p. 65.

and chicane of political casuistry to inquire, even if the fact could be better ascertained, whether at Edgehill, or in the minor skirmishes that preceded, the first carbine was discharged by a cavalier or a roundhead. The aggressor in a war is not the first who uses force, but the first who renders force necessary.

But, whether we may think this war to have originated in the king's or the parliament's aggression, it is still evident that the former had a fair cause with the nation, a cause which it was no plain violation of justice to defend. He was supported by the greater part of the peers, by full one-third of the commons, by the principal body of the gentry, and a large proportion of other classes. If his adherents did not form, as I think they did not, the majority of the people, they were at least more numerous, beyond comparison, than those who demanded or approved of his death. The steady deliberate perseverance of so considerable a body in any cause takes away the right of punishment from the conquerors, beyond what their own safety or reasonable indemnification may require. The vanquished are to be judged by the rules of national, not of municipal law. Hence, if Charles, after having by a course of victories or the defection of the people prostrated all opposition, had abused his triumph by the execution of Essex or Hampden, Fairfax or Cromwell, I think that later ages would have disapproved of their deaths as positively, though not quite as vehemently, as they have of his own. The line is not easily drawn, in abstract reasoning, between the treason which is justly punished, and the social schism which is beyond the proper boundaries of law; but the civil war of England seems plainly to fall within the latter description. These objections strike me as unanswerable, even if the trial of Charles had been sanctioned by the voice of the nation through its legitimate representatives, or at least such a fair and full convention as might, in great necessity, supply the place of lawful authority. But it was, as we all know, the act of a bold but very small minority, who, having forcibly expelled their colleagues from parliament, had usurped, under the protection of a military force, that power which all England reckoned illegal. I cannot perceive what there was in the imagined solemnity of

this proceeding, in that insolent mockery of the forms of justice, accompanied by all unfairness and inhumanity in its circumstances, which can alleviate the guilt of the transaction; and if it be alleged that many of the regicides were firmly persuaded in their consciences of the right and duty of condemning the king, we may surely remember that private murderers have often had the same apology.

His character.

In discussing each particular transaction in the life of Charles, as of any other sovereign, it is required by the truth of history to spare no just animadversion upon his faults; especially where much art has been employed by the writers most in repute to carry the stream of public prejudice in an opposite direction. But when we come to a general estimate of his character, we should act unfairly not to give their full weight to those peculiar circumstances of his condition in this worldly scene which tend to account for and extenuate his failings. The station of kings is, in a moral sense, so unfavourable, that those who are least prone to servile admiration should be on their guard against the opposite error of an uncandid severity. There seems no fairer method of estimating the intrinsic worth of a sovereign than to treat him as a subject, and to judge, so far as the history of his life enables us, what he would have been in that more private and happier condition from which the chance of birth has excluded him. Tried by this test, we cannot doubt that Charles I. would have been not altogether an amiable man, but one deserving of general esteem; his firm and conscientious virtues the same, his deviations from right far less frequent than upon the throne. It is to be pleaded for this prince, that his youth had breathed but the contaminated air of a profligate and servile court—that he had imbibed the lessons of arbitrary power from all who surrounded him—that he had been betrayed by a father's culpable blindness into the dangerous society of an ambitious, unprincipled favourite. To have maintained so much correctness of morality as his enemies confess, was a proof of Charles's virtuous dispositions; but his advocates are compelled also to own that he did not escape as little injured by the poisonous adulation to which he had listened. Of a

temper by nature, and by want of restraint, too passionate, though not vindictive, and, though not cruel, certainly deficient in gentleness and humanity, he was entirely unfit for the very difficult station of royalty, and especially for that of a constitutional king. It is impossible to excuse his violations of liberty on the score of ignorance, especially after the Petition of Right; because his impatience of opposition from his council made it unsafe to give him any advice that thwarted his determination. His other great fault was want of sincerity—a fault that appeared in all parts of his life, and from which no one who has paid the subject any attention will pretend to exculpate him. Those indeed who know nothing but what they find in Hume may believe, on Hume's authority, that the king's contemporaries never deemed of imputing to him any deviation from good faith; as if the whole conduct of the parliament had not been evidently founded upon a distrust which on many occasions they very explicitly declared. But, so far as this insincerity was shown in the course of his troubles, it was a failing which untoward circumstances are apt to produce, and which the extreme hypocrisy of many among his adversaries might sometimes palliate. Few personages in history, we should recollect, have had so much of their actions revealed, and commented upon, as Charles; it is perhaps a mortifying truth that those who have stood highest with posterity have seldom been those who have been most accurately known.

The turn of his mind was rather peculiar, and laid him open with some justice to very opposite censures—for an extreme obstinacy in retaining his opinion, and for an excessive facility in adopting that of others. But the apparent incongruity ceases, when we observe that he was tenacious of ends and irresolute as to means; better fitted to reason than to act; never swerving from a few main principles, but diffident of his own judgment in its application to the course of affairs. His chief talent was an acuteness in dispute; a talent not usually much exercised by kings, but which the strange events of his life called into action. He had, unfortunately for himself, gone into the study most fashionable in that age, of polemical theology; and, though not at all learned, had read enough of the English divines to

maintain their side of the current controversies with much dexterity. But this unkingly talent was a poor compensation for the continual mistakes of his judgment in the art of government and the conduct of his affairs.[1]

Icon Basiliké.

It seems natural not to leave untouched in this place the famous problem of the Icon Basiliké, which has been deemed an irrefragable evidence both of the virtues and the talents of Charles. But the authenticity of this work can hardly be any longer a question among judicious men. We have letters from Gauden and his family asserting it as his own in the most express terms, and making it the ground of a claim for reward. We know that the king's sons were both convinced that it was not their father's composition, and that Clarendon was satisfied of the same. If Gauden not only set up a false claim to so famous a work, but persuaded those nearest to the king to surrender that precious record, as it had been reckoned, of his dying sentiments, it was an instance of successful impudence which has hardly a parallel. But I should be content to rest the case on that internal evidence which has been so often alleged for its authenticity. The Icon has, to my judgment, all the air of a fictitious composition. Cold, stiff, elaborate, without a single allusion that bespeaks the superior knowledge of facts which the king must have possessed, it contains little but those rhetorical commonplaces which would suggest themselves to any forger. The prejudices of party, which exercise a strange influence in matters of taste, have caused this book to be extravagantly praised. It has doubtless a certain air of grave dignity, and the periods are more artificially constructed than was usual in that

[1] Clarendon, Collier, and the high-church writers in general, are very proud of the superiority they fancy the king to have obtained in a long argumentation held at Newcastle with Henderson, a Scots minister, on church authority and government. This was conducted in writing, and the papers afterwards published. They may be read in the king's Works, and in Collier, p. 842. It is more than insinuated that Henderson died of mortification at his defeat. He certainly had not the excuse of the philosopher, who said he had no shame in yielding to the master of fifty legions. But those who take the trouble to read these papers will probably not think one party so much the stronger as to shorten the other's days. They show that Charles held those extravagant tenets about the authority of the church and of the fathers, which are irreconcilable with protestantism in any country where it is not established, and are likely to drive it out where it is so.

age (a circumstance not in favour of its authenticity); but the style is encumbered with frigid metaphors, as is said to be the case in Gauden's acknowledged writings; and the thoughts are neither beautiful nor always exempt from affectation. The king's letters during his imprisonment, preserved in the Clarendon State Papers, and especially one to his son, from which an extract is given in the History of the Rebellion, are more satisfactory proofs of his integrity than the laboured self-panegyrics of the Icon Basiliké.[k]

[k] The note on this passage, which, on account of its length, was placed at the end of the volume in the two first editions, is withdrawn in this, as relating to a matter of literary controversy, little connected with the general objects of this work. It is needless to add that the author entertains not the smallest doubt about the justness of the arguments he had employed.—*Note to the 3rd edit.*

PART II.

Abolition of the Monarchy — and of the House of Lords — Commonwealth — Schemes of Cromwell — His Conversations with Whitelock — Unpopularity of the Parliament — Their Fall — Little Parliament — Instrument of Government — Parliament called by Cromwell — Dissolved by him — Intrigues of the King and his Party — Insurrectionary Movements in 1655 — Rigorous Measures of Cromwell — His Arbitrary Government — He summons another Parliament — Designs to take the Crown — The Project fails — but his Authority as Protector is augmented — He aims at forming a new House of Lords — His Death — and Character — Richard, his Son, succeeds him — is supported by some prudent Men — but opposed by a Coalition — Calls a Parliament — The Army overthrow both — Long Parliament restored — Expelled again — and again restored — Impossibility of establishing a Republic — Intrigues of the Royalists — They unite with the Presbyterians — Conspiracy of 1659 — Interference of Monk — His Dissimulation — Secluded Members return to their Seats — Difficulties about the Restoration — New Parliament — King restored — Whether previous Conditions required — Plan of reviving the Treaty of Newport inexpedient — Difficulty of framing Conditions — Conduct of the Convention about this not blameable — except in respect of the Militia — Conduct of Monk.

Abolition of the monarchy.

THE death of Charles I. was pressed forward rather through personal hatred and superstition than out of any notion of its necessity to secure a republican administration. That party was still so weak that the commons came more slowly, and with more difference of judgment, than might be expected, to an absolute renunciation of monarchy. They voted, indeed, that the people are, under God, the original of all just power; and that whatever is enacted by the commons in parliament hath the force of law, although the consent and concurrence of the king or house of peers be not had thereto; terms manifestly not exclusive of the nominal continuance of the two latter. They altered the public style from the king's name to that of the parliament, and gave other indications of their intentions; but the vote for the abolition of monarchy did not pass till the 7th of February, after a debate, according to Whitelock, but without a division. None of that clamorous fanaticism showed itself which, within the memory of many,[m] produced, from a far more

[m] 1807.

numerous assembly, an instantaneous decision against monarchy. Wise men might easily perceive that the regal power was only suspended through the force of circumstances, not abrogated by any real change in public opinion.

The house of lords, still less able than the crown to withstand the inroads of democracy, fell by a vote of the commons at the same time. It had continued during the whole progress of the war to keep up as much dignity as the state of affairs would permit; tenacious of small privileges and offering much temporary opposition in higher matters, though always receding in the end from a contention wherein it could not be successful. The commons, in return, gave them respectful language, and discountenanced the rude innovators who talked against the rights of the peerage. They voted, on occasion of some rumours, that they held themselves obliged, by the fundamental laws of the kingdom and their covenant, to preserve the peerage with the rights and privileges belonging to the house of peers, equally with their own.[n] Yet this was with a secret reserve that the lords should be of the same mind as themselves. For, the upper house having resented some words dropped from sir John Evelyn, at a conference concerning the removal of the king to Warwick castle, importing that the commons might be compelled to act without them, the commons, vindicating their member as if his words did not bear that interpretation, yet added, in the same breath, a plain hint that it was not beyond their own views of what might be done: "hoping that their lordships did not intend by their inference upon the words, even in the sense they took the same, so to bind up this house to one way of proceeding as that in in no case whatsoever, though never so extraordinary, though never so much importing the honour and interest of the kingdom, the commons of England might not do their duty, for the good and safety of the kingdom, in such a way as they may, if they cannot do it in such a way as they would and most desire."[o]

and of the house of lords.

[n] Parl. Hist. 340. The council of war more than once, in the year 1647, declared their intention of preserving the rights of the peerage. Whitelock, 288; and sir William Waller's Vindication, 192.

[o] Commons' Journal, 13th and 19th May, 1646.

After the violent seclusion of the constitutional party from the house of commons, on the 6th of December, 1648, very few, not generally more than five, peers continued to meet. Their number was suddenly increased to twelve on the 2nd of January, when the vote of the commons, that it is high treason in the king of England for the time being to levy war against parliament, and the ordinance constituting the high court of justice, were sent up for their concurrence. These were unanimously rejected with more spirit than some, at least, of their number might be expected to display. Yet, as if apprehensive of giving too much umbrage, they voted at their next meeting to prepare an ordinance, making it treasonable for any future king of England to levy war against the parliament—a measure quite as unconstitutional as that they had rejected. They continued to linger on the verge of annihilation during the month, making petty orders about writs of error, from four to six being present; they even met on the 30th of January. On the 1st of February, six peers forming the house, it was moved, "that they would take into consideration the settlement of the government of England and Ireland, in this present conjuncture of things, upon the death of the king;" and ordered that these lords following (naming those present and three more) be appointed to join with a proportionable number of the house of commons for that purpose. Soon after, their speaker acquainted the house that he had that morning received a letter from the earl of Northumberland, "with a paper enclosed, of very great concernment;" and for the present the house ordered that it should be sealed up with the speaker's seal. This probably related to the impending dissolution of their house, for they found next day that their messengers sent to the commons had not been admitted. They persisted, however, in meeting till the 6th, when they made a trifling order, and adjourned "till ten o'clock to-morrow." [p] That morrow was the 25th April, 1660. For the commons having the same day rejected, by a majority of forty-four to twenty-nine, a motion that they would take the advice of the house of lords in the exercise of the legislative power, resolved

[p] Lords' Journals.

that the house of peers was useless and dangerous, and ought to be abolished.[q] It should be noticed that there was no intention of taking away the dignity of peerage; the lords, throughout the whole duration of the commonwealth, retained their titles, not only in common usage, but in all legal and parliamentary documents. The earl of Pembroke, basest among the base, condescended to sit in the house of commons as knight for the county of Berks, and was received, notwithstanding his proverbial meanness and stupidity, with such excessive honour as displayed the character of those lowminded upstarts who formed a sufficiently numerous portion of the house to give their tone to its proceedings.[r]

Thus by military force, with the approbation of an inconceivably small proportion of the people, the king was put to death, the ancient fundamental laws were overthrown, and a mutilated house of commons, wherein very seldom more than seventy or eighty sat, was invested with the supreme authority. So little countenance had these late proceedings, even from those who seemed of the ruling faction, that, when the executive council of state, consisting of forty-one, had been nominated, and a test was proposed to them, declaring their approbation of all that had been done about the king and the kingly office and about the house of lords, only nineteen would subscribe it, though there were fourteen regicides on the list.[s] It was agreed at length that they should subscribe it only as to the future

Commonwealth.

[q] Commons' Journals. It had been proposed to continue the house of lords as a court of judicature, or as a court of consultation, or in some way or other to keep it up. The majority, it will be observed, was not very great; so far was the democratic scheme from being universal even within the house. Whitelock, 377. Two divisions had already taken place: one on Jan. 9, when it was carried by thirty-one to eighteen that "a message from the lords should be received;" Cromwell strongly supporting the motion, and being a teller for it; and again on Jan. 18, when, the opposite party prevailing, it was negatived by twenty-five to eighteen to ask their assent to the vote of the 4th instant, that the sovereignty resided in the commons; which, doubtless, if true, could not require the lords' concurrence.

[r] Whitelock, 396. They voted that Pembroke, as well as Salisbury and Howard of Escrick, who followed the ignominious example, should be added to all committees.

[s] Commons' Journals. Whitelock. It had been referred to a committee of five members, Lisle, Holland, Robinson, Scott, and Ludlow, to recommend thirty-five for a council of state; to whose nominations the house agreed, and added their own. Ludlow, i. 298. They were appointed for a year; but in 1650 the house only left out two of the former list, besides those who were dead. Whitelock, 441. In 1651 the change was more considerable. Id. 488.

proceedings of the commons. With such dissatisfaction at head-quarters there was little to hope from the body of the nation.[t] Hence, when an engagement was tendered to all civil officers and beneficial clergy, containing only a promise to live faithful to the commonwealth, as it was established without a king or house of lords (though the slightest test of allegiance that any government could require), it was taken with infinite reluctance, and, in fact, refused by very many, the presbyterian ministers especially showing a determined averseness to the new republican organization.[u]

This, however, was established (such is the dominion of the sword) far beyond the control of any national sentiment. Thirty thousand veteran soldiers guaranteed the mock parliament they had permitted to reign. The sectaries, a numerous body, and still more active than numerous, possessed, under the name of committees for various purposes appointed by the house of commons, the principal local authorities, and restrained by a vigilant scrutiny the murmurs of a disaffected majority. Love, an eminent presbyterian minister, lost his head for a conspiracy by the sentence of a high court of justice, a tribunal that superseded trial by jury.[x] His death struck horror and consternation into that arrogant priesthood who had begun to fancy themselves almost beyond the scope of criminal law. The cavaliers were prostrate in the dust, and, anxious to retrieve something from the wreck of their long-sequestered estates, had generally little appetite to embark afresh in a hopeless cause;

[t] Six judges agreed to hold on their commissions—six refused. Whitelock, who makes a poor figure at this time on his own showing, consented to act still as commissioner of the great seal. Those who remained in office affected to stipulate that the fundamental laws should not be abolished; and the house passed a vote to this effect. Whitelock, 378.

[u] Whitelock, 444, et alibi. Baxter's Life 64. A committee was appointed, April, 1649, to inquire about ministers who asperse the proceedings of parliament in their pulpits. Whitelock, 395.

[x] State Trials, v. 43. Baxter says that Love's death hurt the new commonwealth more than would be easily believed, and made it odious to all the religious party in the land, except the sectaries. Life of B., 67. But "oderint dum metuant" is the device of those who rule in revolutions. Clarendon speaks, on the contrary, of Love's execution triumphantly. He had been distinguished by a violent sermon during the treaty of Uxbridge, for which the parliament, on the complaint of the king's commissioners, put him in confinement. Thurloe, i. 65; State Trials, 201. Though the noble historian, as usual, represents this otherwise. He also misstates Love's dying speech.

besides that the mutual animosities between their party and the presbyterians were still too irreconcilable to admit of any sincere co-operation. Hence neither made any considerable effort in behalf of Charles on his march, or rather flight, into England: a measure, indeed, too palpably desperate for prudent men who had learned the strength of their adversaries, and the great victory of Worcester consummated the triumph of the infant commonwealth, or rather of its future master.

A train of favouring events, more than any deep-laid policy, had now brought sovereignty within the reach of Cromwell. His first schemes of ambition may probably have extended no farther than a title and estate, with a great civil and military command in the king's name. Power had fallen into his hands because they alone were fit to wield it; he was taught by every succeeding event his own undeniable superiority over his contemporaries in martial renown, in civil prudence, in decision of character, and in the public esteem which naturally attached to these qualities. Perhaps it was not till after the battle of Worcester that he began to fix his thoughts, if not on the dignity of royalty, yet on an equivalent right of command. Two remarkable conversations, in which Whitelock bore a part, seem to place beyond controversy the nature of his designs. About the end of 1651, Whitelock himself, St. John, Widdrington, Lenthall, Harrison, Desborough, Fleetwood, and Whalley, met Cromwell, at his own request, to consider the settlement of the nation. The four former were in favour of monarchy, Whitelock inclining to Charles, Widdrington and others to the duke of Gloucester; Desborough and Whalley were against a single person's government, and Fleetwood uncertain. Cromwell, who had evidently procured this conference in order to sift the inclinations of so many leading men, and to give some intimation of his own, broke it up with remarking that, if it might be done with safety and preservation of their rights as Englishmen and Christians, a settlement of somewhat with monarchical power in it would be very effectual.[7] The observation he here made of a disposi-

Schemes of Cromwell.

His conversations with Whitelock.

[7] Whitelock, 515.

tion among the lawyers to elect the duke of Gloucester, as being exempt by his youth from the prepossessions of the two elder brothers, may, perhaps, have put Cromwell on releasing him from confinement, and sending him to join his family beyond sea.[1]

"Twelve months after this time, in a more confidential discourse with Whitelock alone, the general took occasion to complain both of the chief officers of the army and of the parliament; the first, as inclined to factious murmurings, and the second, as engrossing all offices to themselves, divided into parties, delaying business, guilty of gross injustice and partiality, and designing to perpetuate their own authority. Whitelock, confessing part of this, urged that, having taken commissions from them as the supreme power, it would be difficult to find means to restrain them. "What," said Cromwell, "if a man should take upon him to be king?" "I think," answered Whitelock, "that remedy would be worse than the disease." "Why," rejoined the other, "do you think so?" He then pointed out that the statute of Henry VII. gave a security to those who acted under a king which no other government could furnish; and that the reverence paid by the people to that title would serve to curb the extravagancies of those now in power. Whitelock replied, that their friends having engaged in a persuasion, though erroneous, that their rights and liberties would be better preserved under a common wealth than a monarchy, this state of the question would be wholly changed by Cromwell's assumption of the title, and it would become a private controversy between his family and that of the Stuarts. Finally, on the other's encouragement to speak fully his thoughts, he

[1] The parliament had resolved, 24th July 1650, that Henry Stuart, son of the late king, and the lady Elizabeth, daughter of the late king, be removed forthwith beyond the seas out of the limits of this commonwealth. Yet this intention seems to have been soon changed; for it is resolved, Sept. 11, to give the duke of Gloucester 1500*l.* per annum for his maintenance so long as he should behave himself inoffensively. Whether this proceeded from liberality, or from a vague idea that they might one day make use of him, is hard to say. Clarendon mentions the scheme of making the duke of Gloucester king, in one of his letters (iii. 38, 11th Nov. 1651); but says, "Truly I do believe that Cromwell might as easily procure himself to be chosen king as the duke of Gloucester; for, as none of the king's party would assist the last, so I am persuaded both presbyterians and independents would have much sooner the former than any of the race of him whom they have murthered."

told him "that no expedient seemed so desirable as a private treaty with the king, in which he might not only provide for the security of his friends and the greatness of his family, but set limits to monarchical power, keeping the command of the militia in his own hands." Cromwell merely said "that such a step would require great consideration;" but broke off with marks of displeasure, and consulted Whitelock much less for some years afterwards.[a]

These projects of usurpation could not deceive the watchfulness of those whom Cromwell pretended to serve. He had on several occasions thrown off enough of his habitual dissimulation to show the commonwealth's men that he was theirs only by accident, with none of their fondness for republican polity. The parliament in its present wreck contained few leaders of superior ability, but a natural instinct would dictate to such an assembly the distrust of a popular general, even if there had been less to alarm them in his behaviour.[b] They had no means, however, to withstand him. The creatures themselves of military force, their pretensions to direct or control the army could only move scorn or resentment. Their claim to a legal authority, and to the name of representatives of a people who rejected and abhorred them, was perfectly impudent. When the house was fullest their numbers did not much exceed one hundred; but the ordinary divisions, even on subjects of the highest moment, show an attendance of but fifty or sixty members. They had retained in their hands, notwithstanding the appointment of a council of state, most of whom were from their own body, a great part of the executive government, especially the disposal of offices.[c] These they largely shared among themselves or their dependents; and in many of their votes gave occasion to such charges of injustice and partiality as, whether true or false, will

Unpopularity of the parliament.

[a] Id. p. 548. Lord Orrery told Burnet that he had once mentioned to Cromwell a report that he was to bring in the king, who should marry his daughter, and observed that he saw no better expedient. Cromwell, without expressing any displeasure, said, "The king cannot forgive his father's blood," which the other attempted to answer. Burnet, i. 95. It is certain, however, that such a compromise would have been dishonourable for one party, and infamous for the other.

[b] Cromwell, in his letter to the parliament, after the battle of Worcester, called it a *crowning mercy*. This, though a very intelligible expression, was taken in an invidious sense by the republicans.

[c] Journals, passim.

attach to a body of men so obviously self-interested.[d] It seems to be a pretty general opinion that a popular assembly is still more frequently influenced by corrupt and dishonest motives in the distribution of favours or the decision of private affairs than a ministry of state; whether it be that it is more probable that a man of disinterestedness and integrity may in the course of events rise to the conduct of government than that such virtues should belong to a majority; or that the clandestine management of court corruption renders it less scandalous and more easily varnished than the shamelessness of parliamentary iniquity.

The republican interest in the nation was almost wholly composed of two parties, both offshoots deriving strength from the great stock of the army; the levellers, of whom Lilburne and Wildman are the most known, and the anabaptists, fifth-monarchy men, and other fanatical sectaries, headed by Harrison, Hewson, Overton, and a great number of officers. Though the sectaries seemed to build their revolutionary schemes more on their own religious views than the levellers, they coincided in most of their objects and demands.[e] An equal

[d] One of their most scandalous acts was the sale of the earl of Craven's estate. He had been out of England during the war, and could not therefore be reckoned a delinquent. But evidence was offered that he had seen the king in Holland; and upon this charge, though he petitioned to be heard, and, as is said, indicted the informer for perjury, whereof he was convicted, they voted by 33 to 31 that his lands should be sold; Haslerig, the most savage zealot of the whole faction, being a teller for the ayes, Vane for the noes. Journals, 6th March, 1651, and 22nd June, 1652; State Trials, v. 323. On the 20th of July in the same year it was referred to a committee to select thirty delinquents whose estates should be sold for the use of the navy. Thus, long after the cessation of hostility, the royalists continued to stand in jeopardy, not only collectively but personally, from this arbitrary and vindictive faction. Nor were these qualities displayed against the royalists alone; one Josiah Primatt, who seems to have been connected with Lilburne Wildman, and the levellers, having presented a petition complaining that sir Arthur Haslerig had violently dispossessed him of some collieries, the house, after voting every part of the petition to be false, adjudged him to pay a fine of 3000*l.* to the commonwealth, 2000*l.* to Haslerig, and 2000*l.* more to the commissioners for compositions. Journals, 15th Jan. 1651-2. There had been a project of erecting an university at Durham, in favour of which a committee reported (18th June, 1651), and for which the chapter-lands would have made a competent endowment. Haslerig, however, got most of them into his own hands, and thus frustrated, perhaps, a design of great importance to education and literature in this country. For had an university once been established, it is just possible, though not very likely, that the estates would not have reverted, on the king's restoration, to their former, but much less useful, possessors.

[e] Mrs. Hutchinson speaks very favourably of the levellers, as they appeared about 1647, declaring against the factions of the presbyterians and indepen-

representation of the people in short parliaments, an extensive alteration of the common law, the abolition of tithes, and indeed of all regular stipends to the ministry, a full toleration of religious worship, were reformations which they concurred in requiring as the only substantial fruits of their arduous struggle.[f] Some among the wilder sects dreamed of overthrowing all civil institutions. These factions were not without friends in the commons. But the greater part were not inclined to gratify them by taking away the provision of the church, and much less to divest themselves of their own authority. They voted indeed that tithes should cease as soon as a competent maintenance should be otherwise provided for the clergy.[g] They appointed a commission to consider the reformation of the law, in consequence of repeated petitions against many of its inconveniences and abuses; who, though taxed of course with dilatoriness by the ardent innovators, suggested many useful improvements, several of which have been adopted in more regular times, though with too cautious delay.[h] They proceeded rather slowly and reluctantly to frame a scheme for future

dents, and the ambitious views of their leaders, and especially against the unreasonable privileges claimed by the houses of parliament collectively and personally. "Indeed, as all virtues are mediums and have their extremes, there rose up after in that house a people who endeavoured the levelling of all estates and qualities, which those sober levellers were never guilty of desiring; but were men of just and sober principles, of honest and religious ends, and were therefore hated by all the designing self-interested men of both factions. Colonel Hutchinson had a great intimacy with many of these; and so far as they acted according to the just, pious, and public spirit which they professed, owned them and protected them as far as he had power. These were they who first began to discover the ambition of lieut.-gen. Cromwell and his idolaters, and to suspect and dislike it." P. 285.

[f] Whitelock, 399, 401. The levellers rose in arms at Banbury and other places, but were soon put down, chiefly through the energy of Cromwell, and their ring-leaders shot.

[g] It was referred to a committee, 29th April, 1642, to consider how a convenient and competent maintenance for a godly and able ministry may be settled, in lieu of tithes. A proposed addition, that tithes be paid as before, till such maintenance be settled, was carried by 27 to 17.

[h] Journals, 19th Jan. 1652. Hale was the first named on this commission, and took an active part; but he was associated with some furious levellers, Desborough, Tomlinson, and Hugh Peters, so that it is hard to know how far he concurred in the alterations suggested. Many of them, however, seem to bear marks of his hand. Whitelock, 475, 517, 519, 820 et alibi. There had been previously a committee for the same purpose in 1650. See a list of the acts prepared by them in Somers Tracts, vi. 177; several of them are worthy of attention. Ludlow, indeed, blames the commission for slowness; but their delay seems to have been very justifiable, and their suggestions highly valuable. It even appears that they drew up a book containing a regular digest or code, which was ordered to be printed. Journals, 20th Jan. 1653.

parliaments; and resolved that they should consist of 400, to be chosen in due proportion by the several counties, nearly upon the model suggested by Lilburne, and afterwards carried into effect by Cromwell.[l]

Their fall.

It was with much delay and difficulty, amidst the loud murmurs of their adherents, that they could be brought to any vote in regard to their own dissolution. It passed on November 17, 1651, after some very close divisions, that they should cease to exist as a parliament on November 3, 1654.[k] The republicans out of doors, who deemed annual, or at least biennial, parliaments essential to their definition of liberty, were indignant at so unreasonable a prolongation. Thus they forfeited the good-will of the only party on whom they could have relied. Cromwell dexterously aggravated their faults: he complained of their delaying the settlement of the nation; he persuaded the fanatics of his concurrence in their own schemes; the parliament, in turn, conspired against his power, and, as the conspiracies of so many can never be secret, let it be seen that one or other must be destroyed—thus giving his forcible expulsion of them the pretext of self-defence. They fell with no regret, or rather with much joy of the nation, except a few who dreaded more from the alternative of military usurpation or anarchy than from an assembly which still retained the names and forms so precious in the eyes of those who adhere to the ancient institutions of their country.[m]

[l] A committee was named, 15th May, 1649, to take into consideration the settling of the succession of future parliaments and regulating their elections. Nothing more appears to have been done till Oct. 11th, when the committee was ordered to meet next day, and so de die in diem, and to give an account thereof to the house on Tuesday come fortnight; all that came to have voices, but the special care thereof commended to sir Henry Vane, colonel Ludlow, and Mr. Robinson. We find nothing farther till Jan. 3rd, 1650, when the committee is ordered to make its report the next Wednesday. This is done accordingly, Jan. 9, when sir H. Vane reports the resolutions of the committee, one of which was, that the number in future parliaments should be 400. This was carried, after negativing the previous question in a committee of the whole house. They proceeded several days afterwards on the same business. See also Ludlow, p. 313, 435.

[k] Two divisions had taken place, Nov. 14 (the first on the previous question), on a motion that it is convenient to declare a certain time for the continuance of this parliament, 50 to 46, and 49 to 47. On the last division Cromwell and St. John were tellers for the ayes.

[m] Whitelock was one of these; and, being at that time out of Cromwell's favour, inveighs much against this destruction of the power from which he had taken his commission. P. 552, 554. St. John appears to have concurred in the measure. In fact there had so long been

It was now the deep policy of Cromwell to render himself the sole refuge of those who valued the laws, or the regular ecclesiastical ministry, or their own estates, all in peril from the mad enthusiasts who were in hopes to prevail.[n] These he had admitted into that motley convention of one hundred and twenty persons, sometimes called Barebone's parliament, but more commonly the little parliament, on whom his council of officers pretended to devolve the government, mingling them with a sufficient proportion of a superior class whom he could direct.[o] This assembly took care to avoid the censure which their predecessors had incurred, by passing a good many bills, and applying themselves with a vigorous hand to the reformation of what their party deemed the most essential grievances, those of the law and of the church. They voted the abolition of the court of chancery, a measure provoked by its insufferable delay, its engrossing of almost all suits, and the uncertainty of its decisions. They appointed a committee to consider of a new body of the law, without naming any lawyer

Little parliament.

Instrument of government.

an end of law that one usurpation might seem as rightful as another. But while any house of commons remained there was a stock left from which the ancient constitution might possibly germinate. Mrs. Macaulay, whose lamentations over the Rump did not certainly proceed from this cause, thus vents her wrath on the English nation: "An acquiescence thus universal in the insult committed on the guardians of the infant republic, and the first step towards the usurpation of Cromwell, fixes an indelible stain on the character of the English, as a people basely and incorrigibly attached to the sovereignty of individuals, and of natures too ignoble to endure an empire of equal laws." Vol. v. p. 112.

[n] Harrison, when Ludlow asked him why he had joined Cromwell to turn out the parliament, said, he thought Cromwell would own and favour a set of men who acted on higher principles than those of civil liberty; and quoted from Daniel, "that the saints shall take the kingdom and possess it." Ludlow argued against him; but what was argument to such a head? Mem. of Ludlow, p. 565. Not many months after, Cromwell sent his coadjutor to Carisbrook castle.

[o] Hume speaks of this assembly as chiefly composed of the lowest mechanics. But this was not the case. Some persons of inferior rank there were, but a large proportion of the members were men of good family, or, at least, military distinction, as the list of the names in the Parliamentary History is sufficient to prove; and Whitelock remarks, "It was much wondered at by some that these gentlemen, many of them being persons of fortune and knowledge, would at this summons, and from those bands, take upon them the supreme authority of this nation." P. 559. With respect to this, it may be observed that those who have lived in revolutions find it almost necessary, whether their own interests or those of their country are their aim, to comply with all changes, and take a greater part in supporting them than men of inflexible consciences can approve. No one felt this more than Whitelock; and his remark in this place is a satire upon all his conduct. He was at the moment dissatisfied, and out of Cromwell's favour, but lost no time in regaining it.

upon it.[p] They nominated a set of commissioners to preside in courts of justice, among whom they with difficulty admitted two of that profession;[q] they irritated the clergy by enacting that marriages should be solemnized before justices of the peace;[r] they alarmed them still more by manifesting a determination to take away their tithes, without security for an equivalent maintenance.[s] Thus, having united against itself these two powerful bodies, whom neither kings nor parliaments in England have in general offended with impunity, this little synod of legislators was ripe for destruction. Their last vote was to negative a report of their own committee, recommending that such as should be approved as preachers of the gospel should enjoy the maintenance already settled by law; and that the payment of tithes, as a just property, should be enforced by the magistrates. The house having, by the majority of two, disagreed with this report,[t] the speaker, two days after, having secured a majority of those present, proposed the surrender of their power into the hands of Cromwell, who put an end to the opposition of the rest by turning them out of doors.

It can admit of no doubt that the despotism of a wise man is more tolerable than that of political or religious fanatics; and it rarely happens that there is any better remedy in revolutions which have given the latter an ascendant. Cromwell's assumption, therefore, of the title of protector was a necessary and wholesome usurpation, however he may have caused the necessity; it

[p] Journals, August 19. This was carried by 46 to 38 against Cromwell's party. Yet Cromwell, two years afterwards, published an ordinance for regulating and limiting the jurisdiction of chancery, which offended Whitelock so much that he resigned the great seal, not having been consulted in framing the regulations. This is a rare instance in his life; and he vaunts much of his conscience accordingly, but thankfully accepted the office of commissioner of the treasury instead. P. 621, 625. He does not seem, by his own account, to have given much satisfaction to suitors in equity (p. 548); yet the fault may have been theirs, or the system's.

[q] 4th October.

[r] This had been proposed by the commission for amendment of the law appointed in the long parliament. The great number of dissenters from the established religion rendered it a very reasonable measure.

[s] Thurloe, i. 369; iii. 132.

[t] Journals, 2nd and 10th Dec. 1653. Whitelock. See the sixth volume of the Somers Tracts (p. 266) for a long and rather able vindication of this parliament by one of its members. Ludlow also speaks pretty well of it, p. 471; and says truly enough that Cromwell frightened the lawyers and clergy, by showing what the parliament meant to do with them which made them in a hurry to have it destroyed. See also Parl. Hist. 1412, 1414

secured the nation from the mischievous lunacy of the anabaptists, and from the more cool-blooded tyranny of that little oligarchy which arrogated to itself the name of commonwealth's men. Though a gross and glaring evidence of the omnipotence of the army, the instrument under which he took his title accorded to him no unnecessary executive authority. The sovereignty still resided in the parliament; he had no negative voice on their laws. Until the meeting of the next parliament a power was given him of making temporary ordinances; but this was not, as Hume, on the authority of Clarendon and Warwick, has supposed, and as his conduct, if that were any proof of the law, might lead us to infer, designed to exist in future intervals of the legislature.[a] It would be scarcely worth while, however, to pay much attention to a form of government which was so little regarded, except as it marks the jealousy of royal power, which those most attached to Cromwell, and least capable of any proper notions of liberty, continued to entertain.

In the ascent of this bold usurper to greatness he had successively employed and thrown away several of the powerful factions who distracted the nation. He had encouraged the levellers and persecuted them; he had flattered the long parliament and betrayed it; he had made use of the sectaries to crush the commonwealth; he had spurned the sectaries in his last advance to power. These, with the royalists and the presbyterians, forming in effect the whole people, though too disunited for such a coalition as must have overthrown him, were the perpetual, irreconcilable enemies of his administration. Master of his army, which he well knew how to manage, surrounded by a few deep and experienced

[a] See the instrument of government in Whitelock, p. 571; or Somers Tracts, vi. 257. Ludlow says that some of the officers opposed this; but Lambert forced it down their throats: p. 276. Cromwell made good use of this temporary power. The union of Scotland with England was by one of these ordinances, April 12 (Whitelock, 586); and he imposed an assessment of 120,000*l.* monthly, for three months, and 90,000*l.* for the next three, instead of 70,000*l.* which had been paid before (Id. 591), besides many other ordinances of a legislative nature. "I am very glad," says Fleetwood (Feb. 1655, Thurloe, iii. 183), "to hear his highness has declined the legislative power, which by the instrument of government, in my opinion, he could not exercise after this last parliament's meeting." And the parliament of 1656, at the protector's desire, confirmed all ordinances made since the dissolution of the long parliament. Thurloe, vi. 243.

counsellors, furnished by his spies with the completest intelligence of all designs against him, he had no great cause of alarm from open resistance. But he was bound by the instrument of government to call a parliament; and in any parliament his adversaries must be formidable. He adopted in both those which he summoned the reformed model already determined; limiting the number of representatives to 400, to be chosen partly in the counties, according to their wealth or supposed population, by electors possessing either freeholds or any real or moveable property to the value of 200*l.*; partly by the more considerable boroughs, in whose various rights of election no change appears to have been made.[x] This alteration, conformable to the equalizing principles of the age, did not produce so considerable a difference in the persons returned as it perhaps might at present.[y] The court party, as those subservient to him were called, were powerful through the subjection of the electors to the army. But they were not able to exclude the presbyterian and republican interests; the latter, headed by Bradshaw, Haslerig, and Scott, eager to thwart the power which they were compelled to obey.[z] Hence they began by taking into consideration the whole instrument of government; and even resolved themselves into a committee to debate its leading article, the protector's authority. Cromwell, his supporters having lost this question on a division of 141 to 136, thought it time to interfere. He gave them to understand that the government by a single person and a parliament was a fundamental principle, not subject to their discussion; and obliged every member to a recognition of it, solemnly promising neither to attempt nor to concur in any alteration of that

Parliament called by Cromwell.

[x] I infer this from the report of a committee of privileges on the election for Lynn, Oct. 20, 1656. See also Journals, Nov. 26, 1654.

[y] It is remarkable that Clarendon seems to approve this model of a parliament, saying, "it was then generally looked upon as an alteration fit to be more warrantably made, and in a better time."

[z] Bourdeaux, the French ambassador, says, "Some were for Bradshaw as speaker, but the protector's party carried it for Lenthall. By this beginning one may judge what the authority of the lord protector will be in this parliament. However it was observed that, as often as he spoke in his speech of liberty of religion, the members did seem to rejoice with acclamations of joy." Thurloe, v. 588. But the election of Lenthall appears by Guibbon Goddard's Journal, lately published in the Introduction to Burton's Diary, to have been unanimous.

article.[a] The commons voted, however, that this recognition should not extend to the entire instrument, consisting of forty-two articles; and went on to discuss them with such heat and prolixity that, after five months, the limited term of their session, the protector, having obtained the ratification of his new scheme neither so fully nor so willingly as he desired, particularly having been disappointed by the great majority of 200 to 60, which voted the protectorate to be elective, not hereditary, dissolved the parliament with no small marks of dissatisfaction.[b]

Dissolved by him.

The banished king, meanwhile, began to recover a little of that political importance which the battle of Worcester had seemed almost to extinguish. So ill supported by his English adherents on that occasion, so incapable, with a better army than he had any prospect of ever raising again, to make a stand against the genius and fortune of the usurper, it was vain to expect that he could be restored by any domestic insurrection, until the disunion of the prevailing factions should offer some more favourable opportunity. But this was too distant a prospect for his court of starving followers. He had from the beginning looked around for foreign assistance. But France was distracted by her own troubles; Spain deemed it better policy to cultivate the new commonwealth; and even

Intrigues of the king and his party.

[a] Journals, 14th and 18th Sept. Parl. Hist. 1445, 1459. Whitelock, 605, &c. Ludlow, 499. Goddard's Journal, 32.

[b] This division is not recorded in the Journals, in consequence, I suppose, of its having been resolved in a committee of the whole house. But it is impossible to doubt the fact, which is referred to, Oct. 19, by a letter of Bourdeaux, the French ambassador (Thurloe, ii. 681), who observes, "Hereby it is easily discerned that the nation is nowise affected to his family, nor much to himself. Without doubt he will strengthen his army, and keep that in a good posture." It is also alluded to by Whitelock, 609. They resolved to keep the militia in the power of the parliament, and that the protector's negative should extend only to such bills as might alter the instrument; and in other cases, if he did not pass bills within twenty days, they were to become laws without his consent Journals, Nov. 10, 1654. Whitelock, 605 This was carried against the court by 109 to 85. Ludlow insinuates that this parliament did not sit out its legal term of five months; Cromwell having interpreted the months to be lunar instead of calendar. Hume has adopted this notion; but it is groundless, the month in law being always of twenty-eight days, unless the contrary be expressed. Whitelock says that Cromwell's dissolution of the parliament, because he found them not so pliable to his purposes as he expected, caused much discontent in them and others; but that he valued it not, esteeming himself above those things: p. 618. He gave out that the parliament were concerned in the conspiracy to bring in the king.

Holland, though engaged in a dangerous war with England, did not think it worth while to accept his offer of joining her fleet, in order to try his influence with the English seamen.[c] Totally unscrupulous as to the means by which he might reign, even at the moment that he was treating to become the covenanted king of Scotland, with every solemn renunciation of popery, Charles had recourse to a very delicate negotiation, which deserves remark, as having led, after a long course of time, but by gradual steps, to the final downfall of his family. With the advice of Ormond, and with the concurrence of Hyde, he attempted to interest the pope (Innocent X.) on his side, as the most powerful intercessor with the catholic princes of Europe.[d] For this purpose it was necessary to promise toleration at least to the catholics. The king's ambassadors to Spain in 1650, Cottington and Hyde, and other agents despatched to Rome at the same time, were empowered to offer an entire repeal of the penal laws.[e] The king himself, some time afterwards, wrote a letter to the pope, wherein he repeated this assurance. That court, however, well aware of the hereditary duplicity of the Stuarts, received his overtures with haughty contempt. The pope returned no answer to the king's letter; but one was received after many months from the general of

[c] Exiles are seldom scrupulous: we find that Charles was willing to propose to the States, in return for their acknowledging his title, "such present and lasting advantages to them by this alliance as may appear most considerable to that nation and to their posterity, and a valuable compensation for whatever present advantages the king can receive by it." Clarendon State Papers, iii. 90. These intrigues would have justly made him odious in England.

[d] Ormond wrote strongly to this effect, after the battle of Worcester, convinced that nothing but foreign assistance could restore the king. "Amongst protestants there is none that hath the power, and amongst the catholics[b] it is visible." Carte's Letters, i. 461.

[e] Clarendon State Papers, ii. 481, et sæpe alibi. The protestant zeal of Hyde had surely deserted him: and his veracity in one letter gave way also: see vol. iii. p. 158. But the great criminality of all these negotiations lay in this, that Charles was by them soliciting such a measure of foreign aid as would make him at once the tyrant of England and the vassal of Spain; since no free parliament, however royalist, was likely to repeal all the laws against popery. "That which the king will be ready and willing to do is to give his consent for the repeal of all the penal laws and statutes which have been made in the prejudice of catholics, and to put them into the same condition as his other subjects." Cottington to Father Bapthorpe. Id. 541. These negotiations with Rome were soon known; and a tract was published, by the parliament's authority, containing the documents. Notwithstanding the delirium of the Restoration, this had made an impression which was not afterwards effaced.

the jesuits, requiring that Charles should declare himself a catholic, since the goods of the church could not be lavished for the support of an heretical prince.[f] Even after this insolent refusal, the wretched exiles still clung at times to the vain hope of succour which as protestants and Englishmen they could not honourably demand.[g] But many of them remarked too clearly the conditions on which assistance might be obtained; the court of Charles, openly or in secret, began to pass over to the catholic church; and the contagion soon spread to the highest places.

In the year 1654 the royalist intrigues in England began to grow more active and formidable through the accession of many discontented republicans.[h] Though there could be no coalition, properly speaking, between such irreconcilable factions, they came into a sort of tacit agreement, as is not unusual, to act in concert for the only purpose they entertained alike, the destruction of their common enemy. Major Wildman, a name not very familiar to the general reader, but which occurs perpetually, for almost half a century, when we look into more secret history, one of those dark and restless spirits who delight in the deep game of conspiracy against every government, seems to have been the first mover of this unnatural combination. He had been early engaged in the schemes of the levellers, and was exposed to the jealous observation of the ruling powers. It appears most probable that his views were to establish a commonwealth, and to make the royalists his dupes. In his correspondence, however, with Brussels, he engaged to restore the king. Both parties were to rise in arms against the new tyranny; and the nation's temper was tried by clandestine intrigues in almost every county.[i] Greater reliance however was placed

f Clarendon State Papers, iii. 181.

g "The pope very well knows," says Hyde to Clement, an agent at the court of Rome, 2nd April, 1656, "how far the king is from thoughts of severity against his catholic subjects; nay, that he doth desire to put them into the same condition with his other subjects, and that no man shall suffer in any consideration for being a Roman catholic." Id. 291.

h Clarendon's History of the Rebellion, b. 14. State Papers, iii. 265, 300, &c. Whitelock observes at this time, "Many sober and faithful patriots did begin to incline to the king's restoration;" and hints that this was his opinion, which excited Cromwell's jealousy of him. P. 620.

i Clarendon's History, vii. 129. State Papers, iii. 265, &c. These levellers were

on the project of assassinating Cromwell. Neither party were by any means scrupulous on this score: if we have not positive evidence of Charles's concurrence in this scheme, it would be preposterous to suppose that he would have been withheld by any moral hesitation. It is frequently mentioned without any disapprobation by Clarendon in his private letters;[k] and, as the royalists certainly justified the murders of Ascham and Dorislaus, they could not in common sense or consistency have scrupled one so incomparably more capable of defence.[m] A Mr. Gerard suffered death for one of these plots to kill Cromwell; justly sentenced, though by an illegal tribunal.[n]

Insurrectionary movements in 1655.

In the year 1655, Penruddock, a Wiltshire gentleman, with a very trifling force, entered Salisbury at the time of the assizes; and, declaring for the king, seized the judge and the sheriff.[o] This little rebellion, meeting with no resistance from the people, but a supineness equally fatal, was soon quelled. It roused Cromwell to secure himself by an unprecedented exercise of power. In possession of all the secrets of his enemies, he knew that want of concert or courage had alone prevented a general rising, towards which indeed there had been some movements in the midland counties.[p] He was aware of his own

very hostile to the interference of Hyde and Ormond, judging them too inflexibly attached to the ancient constitution; but this hostility recommended them to others of the banished king's court who showed the same sentiments.

[k] P. 315, 324, 343. Thurloe, i. 360, 510. In the same volume (p. 248) we find even a declaration from the king, dated at Paris, 3rd May, 1654, offering 500*l.* per annum to any one who should kill Cromwell, and pardon to any one who should leave that party, except Bradshaw, Lenthall, and Haslerig. But this seems unlikely to be authentic: Charles would not have avowed a design of assassination so openly: and it is strange that Lenthall and Haslerig, especially the former, should be thus exempted from pardon, rather than so many regicides.

[m] See what Clarendon says of Ascham's death, State Papers, ii. 542. In another place he observes,—"It is a worse and a baser thing that any man should appear in any part beyond sea under the character of an agent from the rebels, and not have his throat cut." Id. iii. 144.

[n] State Trials, 518. Thurloe, ii. 416. Some of the malecontent commonwealthmen were also eager to get rid of Cromwell by assassination; Wildman, Saxby, Titus. Syndercome's story is well known; he was connected in the conspiracy with those already mentioned. The famous pamphlet by Titus, Killing no Murder, was printed in 1657. Clarendon State Papers, 315, 324, 343.

[o] A very reprehensible passage occurs in Clarendon's account of this transaction, vol. vii. p. 140; where he blames and derides the insurgents for not putting chief justice Rolle and others to death, which would have been a detestable and useless murder.

[p] Whitelock, 618, 620. Ludlow, 513. Thurloe, iii. 264, and through more than

unpopularity, and the national bias towards the exiled king. Juries did not willingly convict the sharers in Penruddock's rebellion.[q] To govern according to law may sometimes be an usurper's wish, but can seldom be in his power. The protector abandoned all thought of it. Dividing the kingdom into districts, he placed at the head of each a major-general as a sort of military magistrate, responsible for the subjection of his prefecture. These were eleven in number, men bitterly hostile to the royalist party, and insolent towards all civil authority.[r] They were employed to secure the payment of a tax of ten per cent., imposed by Cromwell's arbitrary will on those who had ever sided with the king during the late wars, where their estates exceeded 100*l.* per annum. The major-generals, in their correspondence printed among Thurloe's papers, display a rapacity and oppression beyond their master's. They complain that the number of those exempted is too great; they press for harsher measures; they incline to the unfavourable construction in every doubtful case; they dwell on the growth of malignancy and the general disaffection.[s] It was not indeed likely to be mitigated by this unparalleled tyranny. All illusion was now gone as to the pretended benefits of the civil war. It had ended in a despotism, compared to which

Rigorous measures of Cromwell.

half the volume, passim. In the preceding volume we have abundant proofs how completely master Cromwell was of the royalist schemes. The "sealed knot" of the king's friends in London is mentioned as frequently as we find it in the Clarendon Papers at the same time.

[q] Thurloe, iii. 371, &c. "Penruddock and Grove," Ludlow says, "could not have been justly condemned, if they had as sure a foundation in what they declared for, as what they declared against. But certainly it can never be esteemed by a wise man to be worth the scratch of a finger to remove a single person acting by an arbitrary power, in order to set up another with the same unlimited authority:" p. 518. This is a just and manly sentiment. Woe to those who do not recognise it! But is it fair to say that the royalists were contending to set up an unlimited authority?

[r] They were originally ten, Lambert, Desborough, Whalley, Goffe, Fleetwood, Skippon, Kelsey, Butler, Worseley, and Berry. Thurloe, iii. 701. Barkstead was afterwards added. "The major-generals, says Ludlow, "carried things with unheard-of insolence in their several precincts, decimating to extremity when they pleased, and interrupted the proceedings at law upon petitions of those who pretended themselves aggrieved; threatening such as would not yield a ready submission to their orders with transportation to Jamaica, or some other plantation in the West Indies," &c. P. 559.

[s] Thurloe, vol. iv. passim. The unpopularity of Cromwell's government appears strongly in the letters of this collection. Duckinfield, a Cheshire gentleman, writes,—"Charles Stuart hath 500 friends in these adjacent counties for every one friend to you amongst them." Vol. iii. 294.

all the illegal practices of former kings, all that had cost Charles his life and crown, appeared as dust in the balance. For what was ship-money, a general burthen, by the side of the present decimation of a single class, whose offence had long been expiated by a composition and effaced by an act of indemnity? or were the excessive punishments of the star-chamber so odious as the capital executions inflicted without trial by peers, whenever it suited the usurper to erect his high court of justice? A sense of present evils not only excited a burning desire to live again under the ancient monarchy, but obliterated, especially in the new generation, that had no distinct remembrance of them, the apprehension of its former abuses.[1]

His arbitrary government.

If this decimation of the royalists could pass for an act of severity towards a proscribed faction, in which the rest of the nation might fancy themselves not interested, Cromwell did not fail to show that he designed to exert an equally despotic command over every man's property. With the advice of the council, he had imposed, or as I conceive (for it is not

[1] It may be fair towards Cromwell to give his own apology for the decimation of the royalists, in a declaration published 1655. "It is a trouble to us to be still rubbing upon the old sore, disobliging those whom we hope time and patience might make friends; but we can with comfort appeal to God, and dare also to their own consciences, whether this way of proceeding with them hath been the matter of our choice, or that which we have sought an occasion for; or whether, contrary to our own inclinations and the constant course of our carriage towards them, which hath been to oblige them by kindness to forsake their former principles, which God hath so often and so eminently bore witness against, we have not been constrained and necessitated hereunto, and without the doing whereof we should have been wanting to our duty to God and these nations.

"That character of difference between them and the rest of the people which is now put upon them is occasioned by themselves, not by us. There is nothing they have more industriously laboured in than this—to keep themselves distinguished from the well-affected of this nation: to which end they have kept their conversation apart; as if they would avoid the very beginnings of union, have bred and educated their children by the sequestered and ejected clergy, and very much confined their marriages and alliances within their own party, as if they meant to entail their quarrel, and prevent the means to reconcile posterity; which with the great pains they take upon all occasions to lessen and suppress the esteem and honour of the English nation in all their actions and undertakings abroad, striving withal to make other nations distinguish their interest from it, gives us ground to judge that they have *separated themselves* from the body of the nation; and therefore we leave it to all mankind to judge whether we ought not to be timely jealous of that separation, and to proceed so against them as they may be at the charge of those remedies which are required against the dangers they have bred.'

clearly explained) continued, a duty on merchandise beyond the time limited by law. A Mr. George Cony having refused to pay this tax, it was enforced from him, on which he sued the collector. Cromwell sent his counsel, Maynard, Twisden, and Wyndham, to the Tower, who soon petitioned for liberty, and abandoned their client. Rolle, the chief justice, when the cause came on, dared not give judgment against the protector; yet, not caring to decide in his favour, postponed the case till the next term, and meanwhile retired from the bench. Glyn, who succeeded him upon it, took care to have this business accommodated with Cony, who, at some loss of public reputation, withdrew his suit. Sir Peter Wentworth, having brought a similar action, was summoned before the council, and asked if he would give it up. "If you command me," he replied to Cromwell, "I must submit;" which the protector did, and the action was withdrawn.[u]

Though it cannot be said that such an interference with the privileges of advocates or the integrity of judges was without precedents in the times of the Stuarts, yet it had never been done in so public or shameless a manner. Several other instances wherein the usurper diverted justice from its course, or violated the known securities of Englishmen, will be found in most general histories; not to dwell on that most flagrant of all, the erection of his high court of justice, by which Gerard and Vowel in 1654, Slingsby and Hewit in 1658, were brought to the scaffold.[x] I cannot therefore agree in the praises which have been showered upon Cromwell for the just administration of the laws under his dominion. That, between party and party, the ordinary civil rights of men were fairly dealt with, is no extraordinary praise; and it may be admitted that he filled the benches of justice with able lawyers, though not so considerable as those of the reign of Charles II.; but it is manifest that, so far as his own authority was concerned, no hereditary despot, proud in the crimes of

[u] Ludlow, 528. Clarendon, &c. Clarendon relates the same story, with additional circumstances of Cromwell's audacious contempt for the courts of justice, and for the very name of magna charta.

[x] State Trials, vi. Whitelock advised the protector to proceed according to law against Hewit and Slingsby; "but his highness was too much in love with the new way." P. 673.

a hundred ancestors, could more have spurned at every limitation than this soldier of a commonwealth.[y]

He summons another parliament.

Amidst so general a hatred, trusting to the effect of an equally general terror, the protector ventured to summon a parliament in 1656. Besides the common necessities for money, he had doubtless in his head that remarkable scheme which was developed during its session.[z] Even the despotic influence of his major-generals, and the political annihilation of the most considerable body of the gentry, then labouring under the imputation of delinquency for their attachment to the late king, did not enable him to obtain a secure majority in the assembly; and he was driven to the audacious measure of excluding above ninety members, duly returned by their constituents, from taking their seats. Their colleagues wanted courage to resist this violation of all privilege; and, after referring them to the council for approbation, resolved to proceed with public business. The excluded members, consisting partly of the republican, partly of the presbyterian factions, published a remonstrance in a very high strain, but obtained no redress.[a]

[y] The late editor of the State Trials, v. 935, has introduced a sort of episodical dissertation on the administration of justice during the commonwealth, with the view, as far as appears, of setting Cromwell in a favourable light. For this purpose he quotes several passages of vague commendation from different authors, and among others one from Burke, written in haste, to serve an immediate purpose, and evidently from a very superficial recollection of our history. It has been said that Cromwell sought out men of character from the party most opposite to his designs. The proof given is the appointment of Hale to be a puisné judge. But Hale had not been a royalist, that is, an adherent of Charles, and had taken the engagement as well as the covenant. It was no great effort of virtue to place an eminent lawyer and worthy man on the bench. And it is to be remembered that Hale fell under the usurper's displeasure for administering justice with an impartiality that did not suit his government; and ceased to go the circuit because the criminal law was not allowed to have its course.

[z] Thurloe writes to Montague (Carte's Letters, ii. 110) that he cannot give him the reasons for calling this parliament, except in cipher. He says in the same place of the committal of Ludlow, Vane, and others, "There was a necessity not only for peace' sake to do this, but to let the nation see those that govern are in good earnest, and intend not to quit the government wholly into the hands of the parliament, as some would needs make the world believe:" p. 112. His first direct allusion to the projected change is in writing to Henry Cromwell, 9th Dec. 1656. Thurloe Papers, v. 194. The influence exerted by his legates, the major-generals, appears in Thurloe, v. 299, et post. But they complained of the elections. Id. 302, 341, 371.

[a] Whitelock, 650. Parl. Hist. 1486. On a letter to the speaker from the members who had been refused admittance at the door of the lobby, Sept. 18, the house

Cromwell, like so many other usurpers, felt his position too precarious, or his vanity ungratified, without the name which mankind have agreed to worship. He had, as evidently appears from the conversations recorded by Whitelock, long since aspired to this titular, as well as to the real, pre-eminence; and the banished king's friends had contemplated the probability of his obtaining it with dismay.[b] Affectionate towards his family, he wished to assure the stability of his son's succession; and perhaps to please the vanity of his daughters. It was indeed a very reasonable object with one who had already advanced so far. His assumption of the crown was desirable to many different classes; to the lawyers, who, besides their regard for the established constitution, knew that an ancient statute would protect those who served a de facto king in case of a restoration of the exiled family; to the nobility, who perceived that their legislative right must immediately revive; to the clergy, who judged the regular ministry more likely to be secure under a monarchy; to the people, who hoped for any settlement that would put an end to perpetual changes; to all of every rank and profession who dreaded the continuance of military despotism, and demanded only the just rights and privileges of their country. A king of England could succeed only to a bounded prerogative, and must govern by the known laws; a protector, as the nation had well felt, with less

Designs to take the crown.

ordered the clerk of the commonwealth to attend next day with all the indentures. The deputy clerk came accordingly, with an excuse for his principal, and brought the indentures; but on being asked why the names of certain members were not returned to the house, answered, that he had no certificate of approbation for them. The house on this sent to inquire of the council why these members had not been approved. They returned for answer, that, whereas it is ordained by a clause in the instrument of government that the persons who shall be elected to serve in parliament shall be such and no other than such as are persons of known integrity, fearing God, and of good conversation, that the council, in pursuance of their duty, and according to the trust reposed in them, have examined the said returns, and have not refused to approve any who have appeared to them to be persons of integrity, fearing God, and of good conversation; and those who are not approved, his highness hath given order to some persons to take care that they do not come into the house. Upon this answer, an adjournment was proposed, but lost by 115 to 80: and it being moved that the persons who have been returned from the several counties, cities, and boroughs to serve in this parliament, and have not been approved, be referred to the council for approbation, and that the house do proceed with the great affairs of the nation, the question was carried by 125 to 29. Journals, Sept. 22.

[b] Clar. State Papers, iii. 201, &c.

nominal authority, had all the sword could confer. And, though there might be little chance that Oliver would abate one jot of a despotism for which not the times of the Tudors could furnish a precedent, yet his life was far worn, and under a successor it was to be expected that future parliaments might assert again all those liberties for which they had contended against Charles.[c] A few of the royalists might perhaps fancy that the restoration of the royal title would lead to that of the lawful heir; but a greater number were content to abandon a nearly desperate cause, if they could but see the more valuable object of their concern, the form itself of polity, re-established.[d] There can be, as it appears to me, little room for doubt, that, if Cromwell had overcome the resistance of his generals, he would have transmitted the sceptre to his descendants with the acquiescence and tacit approbation of the kingdom. Had we been living ever since under the rule of his dynasty, what tone would our historians have taken as to his character and that of the house of Stuart?

[c] The whole conference that took place at Whitehall, between Cromwell and the committee of parliament, on this subject, was published by authority, and may be read in the Somers Tracts, vi. 349. It is very interesting. The lawyers did not hesitate to support the proposition, on the ground of the more definite and legal character of a king's authority. The "king's prerogative," says Glyn, "is known by law; he (king Charles) did expatiate beyond the duty; that's the evil of the man: but in Westminster-hall the king's prerogative was under the courts of justice, and is bounded as well as any acre of land, or anything a man hath, as much as any controversy between party and party; and therefore, the office being lawful in its nature, known to the nation, certain in itself, and confined and regulated by the law, and the other office not being so, that was a great ground of the reason why the parliament did so much insist upon this office and title, not as circumstantial, but as essential." P. 359. See also what Lenthall says, p. 356, against the indefiniteness of the protector's authority.

Those passages were evidently implied censures of the late course of government. Cromwell's indistinct and evasive style in his share of this debate betrays the secret inclinations of his heart. He kept his ultimate intentions, however, very secret; for Thurloe professes his ignorance of them, even in writing to Henry Cromwell, vol. vi. p. 219, *et post*. This correspondence shows that the prudent secretary was uneasy at the posture of affairs, and the manifest dissatisfaction of Fleetwood and Desborough, which had a dangerous influence on others less bound to the present family: yet he had set his heart on this mode of settlement, and was much disappointed at his master's ultimate refusal.

[d] Clarendon's Hist. vii. 194. It appears by Clarendon's private letters that he had expected to see Cromwell assume the title of king from the year 1654. Vol. iii. p. 201, 223, 224. If we may trust what is here called an intercepted letter (p. 328), Mazarin had told Cromwell that France would enter into a strict league with him, if he could settle himself in the throne, and make it hereditary; to which he answered that he designed shortly to take the crown, restore the two houses, and govern by the ancient laws. But this may be apocryphal.

The scheme, however, of founding a new royal line failed of accomplishment, as is well known, through his own caution, which deterred him from encountering the decided opposition of his army. Some of his contemporaries seem to have deemed this abandonment, or more properly suspension, of so splendid a design rather derogatory to his firmness.[e] But few men were better judges than Cromwell of what might be achieved by daring. It is certainly not impossible that, by arresting Lambert, Whalley, and some other generals, he might have crushed for the moment any tendency to open resistance. But the experiment would have been infinitely hazardous. He had gone too far in the path of violence to recover the high road of law by any short cut. King or protector, he must have intimidated every parliament, or sunk under its encroachments. A new-modelled army might have served his turn; but there would have been great difficulties in its formation. It had from the beginning been the misfortune of his government that it rested on a basis too narrow for its safety. For two years he had reigned with no support but the independent sectaries and the army. The army or its commanders becoming odious to the people, he had sacrificed them to the hope of popularity, by abolishing the civil prefectures of the major-generals,[f] and permitting a bill for again decimating the royalists to be thrown out of the house.[g] Their disgust and

The project fails.

[e] Clar. vii. 203.

[f] Ludlow, p. 581. The major-generals, or at least many of them, joined the opposition to Cromwell's royalty. Id. p. 586. Clar. State Papers, 332.

[g] This appears from the following passage in a curious letter of Mr. Vincent Gookin to Henry Cromwell, 27th Jan. 1657. "To-morrow the bill for decimating the cavaliers comes again into debate. It is debated with much heat by the major-generals, and as hotly almost by the anti-decimators. I believe the bill will be thrown out of the house. In my opinion those that speak against the bill have much to say in point of moral justice and prudence; but that which makes me fear the passing of the bill is, that thereby his highness' government will be more founded in force, and more removed from that natural foundation which the people in parliament are desirous to give him; supposing that he will become more theirs than now he is, and will in time find the safety and peace of the nation to be as well maintained by the laws of the land as by the sword. And truly, sir, if any others have pretensions to succeed him by their interest in the army, the more of force upholds his highness living, the greater when he is dead will be the hopes and advantages for such a one to effect his aim who desires to succeed him. Lambert is much for decimations." Thurloe, vi. 20. He writes again, "I am confident it is judged by some that the interest of the godly cannot be preserved but by the dissolution of this, if not all parliaments; and their endeavours in it have been plainly

resentment, excited by an artful intriguer, Lambert, who aspired at least to the succession of the protectorship, found scope in the new project of monarchy, naturally obnoxious to the prejudices of true fanatics, who still fancied themselves to have contended for a republican liberty. We find that even Fleetwood, allied by marriage to Cromwell, and not involved in the discontent of the major-generals, in all the sincerity of his clouded understanding, revolted from the invidious title, and would have retired from service had it been assumed. There seems therefore reason to think that Cromwell's refusal of the crown was an inevitable mortification. But he undoubtedly did not lose sight of the object for the short remainder of his life.[b]

His authority as protector is augmented.

The fundamental charter of the English commonwealth, under the protectorship of Cromwell, had been the instrument of government, drawn up by the council of officers in December, 1653, and approved with modifications by the parliament of the next year. It was now changed to the "Petition and Advice," tendered to him by the present parliament in May, 1657, which made very essential innovations in the frame of polity. Though he bore, as

discovered to the party most concerned to know them; which will, I believe, suddenly occasion a reducing of the government to kingship, to which his highness is not averse. Pierpoint and St. John have been often, but secretly, at Whitehall, I know, to advise thereof." P. 37. Thurloe again, to the same Henry Cromwell, on February 3, that the decimation bill was thrown out by a majority of forty:—"Some gentlemen do think themselves much trampled upon by this vote, and are extremely sensible thereof; and the truth is, it hath wrought such a heat in the house, that I fear little will be done for the future." Id. p. 38. No such bill appears, eo nomine, in the Journals. But a bill for regulating the militia forces was thrown out, Jan. 29, by 124 to 88, col. Cromwell (Oliver's cousin) being a teller for the majority. Probably there was some clause in this renewing the decimation of the royalists.

[b] Whitelock, who was consulted by Cromwell on this business, and took an active part as one of the committee of conference appointed by the house of commons, intimates that the project was not really laid aside. "He was satisfied in his private judgment that it was fit for him to take upon him the title of king, and matters were prepared in order thereunto; but afterwards by solicitation of the commonwealth's men, and fearing a mutiny and defection of a great part of the army, in case he should assume that title and office, his mind changed, and many of the officers of the army gave out great threatenings against him in case he should do it; he therefore thought it best to attend some better season and opportunity in this business, and refused it at this time with great seeming earnestness" P. 650. The chief advisers with Cromwell on this occasion, besides Whitelock, were lord Broghill, Pierpoint, Thurloe, and sir Charles Wolseley. Many passages in Thurloe, vol. vii., show that Cromwell preserved to the last his views on royalty.

formerly, the name of lord protector, we may say, speaking according to theoretical classification, and without reference to his actual exercise of power, which was nearly the same as before, that the English government in the first period should be ranged in the order of republics, though with a chief magistrate at its head; but that from 1657 it became substantially a monarchy, and ought to be placed in that class, notwithstanding the difference in the style of its sovereign. The Petition and Advice had been compiled with a constant respect to that article which conferred the royal dignity on the protector;[i] and when this was withdrawn at his request, the rest of the instrument was preserved with all its implied attributions of sovereignty. The style is that of subjects addressing a monarch; the powers it bestows, the privileges it claims, are supposed, according to the expressions employed, the one to be already his own, the other to emanate from his will. The necessity of his consent to laws, though nowhere mentioned, seems to have been taken for granted. An unlimited power of appointing a successor, unknown even to constitutional kingdoms, was vested in the protector.[k] He was inaugurated with solemnities applicable to monarchs: and what of itself is a sufficient test of the monarchical and republican species of government, an oath of allegiance was taken by every member of parliament to the protector singly, without any mention of the commonwealth.[k] It is surely, therefore, no paradox to assert

[i] Whitelock, 657. It had been agreed, in discussing the Petition and Advice in parliament, to postpone the first article requesting the protector to assume the title of king, till the rest of the *charter* (to use a modern but not inapplicable word) had been gone through. One of the subsequent articles, fixing the revenue at 1,400,000*l.* per annum, provides that no part thereof should be raised by a land-tax, "and this not to be altered without the consent of the *three estates in parliament.*" A division took place, in consequence, no doubt, of this insidious expression, which was preserved by 97 to 60. Journals, 13th March. The first article was carried, after much debate, on March 24, by 123 to 62. It stood thus: "Resolved, That your highness will be pleased to assume the name, style, dignity, and office of king of England, Scotland, and Ireland, and the respective dominions and territories thereunto belonging; and to exercise the same according to the laws of these nations." On Cromwell's first demurring to the proposal, it was resolved to adhere to the Petition and Advice by the small majority of 78 to 65. This was perhaps a sufficient warning that he should not proceed.

[k] Journals, 21st June. This oath, which effectually declared the parliament to be the protector's subjects, was only carried by 63 to 55. Lambert refused it, and was dismissed the army in consequence, with a pension of 2000*l.* per annum, instead of his pay, 10*l.* a-day: so

that Oliver Cromwell was de facto sovereign of England during the interval from June, 1657, to his death in September, 1658.

The zealous opponents of royalty could not be insensible that they had seen it revive in everything except a title, which was not likely to remain long behind.[m] It was too late, however, to oppose the first magistrate's personal authority. But there remained one important point of contention, which the new constitution had not fully settled. It was therein provided that the parliament should consist of two houses; namely, the commons, and what they always termed, with an awkward generality, the other house. This was to consist of not more than seventy, nor less than forty persons, to be nominated by the protector, and, as it stood at first, to be approved by the commons. But, before the close of the session, the court party prevailed so far as to procure the repeal of this last condition;[n] and Cromwell accordingly issued writs of summons to persons of various parties, a few of the ancient peers, a few of his adversaries, whom he hoped to gain over, or at least to exclude from the commons, and of course a majority of his steady adherents. To all these he gave the title of lords, and in the next session their assembly denominated itself the lords' house.[o] This measure encountered considerable difficulty. The republican party, almost as much attached to that vote which had declared the house of lords useless as to that which had abolished the monarchy, and well aware of the intimate connexion between the two, resisted the assumption of this aristocratic title, instead of that of the other house, which the Petition and Advice had sanctioned. The real peers feared to compromise their hereditary right by sitting in an assembly where the tenure was only during life; and disdained some of their colleagues, such as Pride and Hewson, low-born and inso-

He aims at forming a new house of lords.

well did they cater for themselves. Ludlow, 593. Broderick wrote to Hyde, June 30, 1657, that there was a general tranquillity in England, all parties seeming satisfied with the compromise; Fleetwood and Desborough more absolutely Cromwell's friends than before, and Lambert very silent. Clar. State Papers, 349.

[m] Thurloe, vi. 310.

[n] Compare Journals, 11th March with 24th June.

[o] Whitelock, 665. They were to have a judicial power much like that of the real house of lords. Journals, March.

lent men, whom Cromwell had rather injudiciously bribed with this new nobility; though, with these few exceptions, his house of lords was respectably composed. Hence, in the short session of January, 1658, wherein the late excluded members were permitted to take their seats, so many difficulties were made about acknowledging the lords' house by that denomination, that the protector hastily and angrily dissolved the parliament.[p]

It is a singular part of Cromwell's system of policy that he would neither reign with parliaments nor without them; impatient of an opposition which he was sure to experience, he still never seems to have meditated the attainment of a naked and avowed despotism. This was probably due to his observation of the ruinous consequences that Charles had brought on himself by that course, and his knowledge of the temper of the English, never content without the exterior forms of liberty, as well as to the suggestions of counsellors who were not destitute of concern for the laws. He had also his great design yet to accomplish, which could only be safely done under the sanction of a parliament. A very short time, accordingly, before his death, we find that he had not only resolved to meet once more the representatives of the nation, but was tampering with several of the leading officers to obtain their consent to an hereditary succession. The majority however of a council of nine, to whom he referred this suggestion, would only consent that the protector for the time being should have the power of nominating his successor; a vain attempt to escape from that regal form of government which they had been taught to abhor.[q] But a sudden illness, of a

[p] Whitelock; Parl. Hist. The former says this was done against his advice. These debates about the other house are to be traced in the Journals; and are mentioned by Thurloe, vi. 107, &c., and Ludlow, 597. Not one of the true peers, except lord Eure, took his seat in this house; and Haslerig, who had been nominated merely to weaken his influence, chose to retain his place in the commons. The list of these pretended lords in Thurloe, vi. 668, is not quite the same as that in Whitelock.

[q] This junto of nine debated how they might be secure against the cavaliers. One scheme was an oath of abjuration; but this it was thought they would all take: another was to lay a heavy tax on them; "a moiety of their estates was spoken of; but this, I suppose, will not go down with all the nine, and least of all will it be swallowed by the parliament, who will not be persuaded to punish both nocent and innocent without distinction." 22nd June: Thurloe, vol vii. p. 198. And again, p. 269: "I believe we are out of danger of our junto, and I think also of ever having such another. As I take it, the report was made to his highness upon Thursday,

nature[1] seldom fatal except to a constitution already shattered by fatigue and anxiety, rendered abortive all these projects of Cromwell's ambition.

His death and character.

He left a fame behind him proportioned to his extraordinary fortunes and the great qualities which sustained them; still more perhaps the admiration of strangers than of his country, because that sentiment was less alloyed by hatred, which seeks to extenuate the glory that irritates it. The nation itself forgave much to one who had brought back the renown of her ancient story, the traditions of Elizabeth's age, after the ignominious reigns of her successors. This contrast with James and Charles in their foreign policy gave additional lustre to the era of the protectorate. There could not but be a sense of national pride to see an Englishman, but yesterday raised above the many, without one drop of blood in his veins which the princes of the earth could challenge as their own, receive the homage of those who acknowledge no right to power, and hardly any title to respect, except that of prescription. The sluggish pride of the court of Spain, the mean-spirited cunning of Mazarin, the irregular imagination of Christina, sought with emulous ardour the friendship of our usurper.[2] He had the advantage of reaping the harvest which he had not sown, by an honourable treaty with Holland, the fruit of victories achieved under the parliament. But he still employed the great energies of Blake in the service for which he was so eminently fitted; and it is just to say that the maritime glory of England may first be traced from the era of the commonwealth in a track of continuous light. The oppressed protestants in catholic kingdoms, disgusted at the lukewarmness and half-apostasy of the Stuarts, looked up to him as their patron and mediator.

After much consideration the major part voted that succession in the government was indifferent whether it were by election or hereditary; but afterwards some would needs add that it was desirable to have it continued elective; that is, that the chief magistrate should always name his successor, and that of hereditary avoided; and I fear the word 'desirable' will be made 'necessary,' if ever it come upon the trial. His highness, finding he can have no advice from those he most expected it from, saith he will take his own resolutions, and that he can no longer satisfy himself to sit still, and make himself guilty of the loss of all the honest party and of the nation itself."

[2] Harris, p. 348, has collected some curious instances of the servility of crowned heads to Cromwell.

[1] See Clarendon, vii. 297. He saved Nismes from military execution on so-

Courted by the two rival monarchies of Europe, he seemed to threaten both with his hostility; and when he declared against Spain, and attacked her West India possessions, with little pretence certainly of justice, but not by any means, as I conceive, with the impolicy sometimes charged against him, so auspicious was his star that the very failure and disappointment of that expedition obtained a more advantageous possession for England than all the triumphs of her former kings.

Notwithstanding this external splendour, which has deceived some of our own and most foreign writers, it is evident that the submission of the people to Cromwell was far from peaceable or voluntary. His strong and skilful grasp kept down a nation of enemies that must naturally, to judge from their numbers and inveteracy, have overwhelmed him. It required a dexterous management to play with the army, and without the army he could not have existed as sovereign for a day. Yet it seems improbable that, had Cromwell lived, any insurrection or conspiracy, setting aside assassination, could have overthrown a possession so fenced by systematic vigilance, by experienced caution, by the respect and terror that belonged to his name. The royalist and republican intrigues had gone on for several years without intermission; but every part of their designs was open to him; and it appears that there was not courage or rather temerity sufficient to make any open demonstration of so prevalent a disaffection.[t]

The most superficial observers cannot have overlooked

count of a riot, wherein the Huguenots seem to have been much to blame. In the treaty between England and France, 1654, the French, in agreeing to the secret article about the exclusion of the royalists, endeavoured to make it reciprocal, that the commissioners of rebels in France should not be admitted in England. This did not seem very outrageous—but Cromwell objected that the French protestants would be thus excluded from imploring the assistance of England if they were persecuted; protesting, however, that he was very far from having any thought to draw them from their obedience, as had been imputed to him, and that he would arm against them if they should offer, frivolously and without a cause, to disturb the peace of France. Thurloe, iii. 6. In fact, the French protestants were in the habit of writing to Thurloe, as this collection testifies, whenever they thought themselves injured, which happened frequently enough. Cromwell's noble zeal in behalf of the Vaudois is well known. See this volume of Thurloe, p. 412, &c. Mazarin and the catholic powers in general endeavoured to lie down that massacre; but the usurper had too much protestant spirit to believe them. Id. 536.

[t] Ludlow, 607; Thurloe, i. and ii. passim.

the general resemblances in the fortunes and character of Cromwell, and of him who, more recently and upon an ampler theatre, has struck nations with wonder and awe. But the parallel may be traced more closely than perhaps has hitherto been remarked. Both raised to power by the only merit which a revolution leaves uncontroverted and untarnished, that of military achievements, in that reflux of public sentiment when the fervid enthusiasm of democracy gives place to disgust at its excesses and a desire of firm government. The means of greatness the same to both—the extinction of a representative assembly, once national, but already mutilated by violence, and sunk by its submission to that illegal force into general contempt. In military science or the renown of their exploits we cannot certainly rank Cromwell by the side of him for whose genius and ambition all Europe seemed the appointed quarry; but it may be said that the former's exploits were as much above the level of his contemporaries, and more the fruits of an original uneducated capacity. In civil government there can be no adequate parallel between one who had sucked only the dregs of a besotted fanaticism, and one to whom the stores of reason and philosophy were open. But it must here be added that Cromwell, far unlike his antitype, never showed any signs of a legislative mind, or any desire to fix his renown on that noblest basis, the amelioration of social institutions. Both were eminent masters of human nature, and played with inferior capacities in all the security of powerful minds. Though both, coming at the conclusion of a struggle for liberty, trampled upon her claims, and sometimes spoke disdainfully of her name, each knew how to associate the interests of those who had contended for her with his own ascendancy, and made himself the representative of a victorious revolution. Those who had too much philosophy or zeal for freedom to give way to popular admiration for these illustrious usurpers, were yet amused with the adulation that lawful princes showered on them, more gratuitously in one instance with servile terror in the other. Both, too, repaid in some measure this homage of the pretended great by turning their ambition towards those honours and titles which they knew to be so little con-

nected with high desert. A fallen race of monarchs, which had made way for the greatness of each, cherished hopes of restoration by their power, till each, by an inexpiable act of blood, manifested his determination to make no compromise with that line. Both possessed a certain coarse good-nature and affability that covered the want of conscience, honour, and humanity; quick in passion, but not vindictive, and averse to unnecessary crimes. Their fortunes in the conclusion of life were indeed very different: one forfeited the affections of his people, which the other, in the character at least of their master, had never possessed; one furnished a moral to Europe by the continuance of his success, the other by the prodigiousness of his fall. A fresh resemblance arose afterwards, when the restoration of those royal families, whom their ascendant had kept under, revived ancient animosities, and excited new ones; those who from love of democratical liberty had borne the most deadly hatred to the apostates who had betrayed it, recovering some affection to their memory, out of aversion to a common enemy. Our English republicans have, with some exceptions, displayed a sympathy for the name of Cromwell; and I need not observe how remarkably this holds good in the case of his mighty parallel.[u]

[u] Mrs. Macaulay, who had nothing of compromise or conciliation in her temper, and breathed the entire spirit of Vane and Ludlow, makes some vigorous and just animadversions on the favour shown to Cromwell by some professors of a regard for liberty. The dissenting writers, such as Neal, and in some measure Harris, were particularly open to this reproach. He long continued (perhaps the present tense is more appropriate) to be revered by the independents. One who well knew the manners he paints has described the secret idolatry of that sect to their hero-saint. See Crabbe's tale of the Frank Courtship.

Slingsby Bethell, an exception perhaps to the general politics of this sect, published, in 1667, a tract, entitled The World's Mistake in Oliver Cromwell, with the purpose of decrying his policy and depreciating his genius. Harleian Miscellany, i. 280. But he who goes about to prove the world mistaken in its estimate of a public character has always a difficult cause to maintain. Bethell, like Mrs. Macaulay and others, labours to set up the Rump parliament against the soldier who dispersed them; and asserts that Cromwell, having found 500,000*l.* in ready money, with the value of 700,000*l.* in stores, and the army in advance of their pay (subject, however, to a debt of near 500,000*l.*), the customs and excise bringing in nearly a million annually, left a debt which, in Richard's parliament, was given in at 1,900,000*l.*, though he believes this to have been purposely exaggerated in order to procure supplies. I cannot say how far these sums are correct; but it is to be kept in mind that one great resource of the parliament, confiscation, sequestration, composition, could not be repeated for ever. Neither of these governments, it will be found on inquiry, were economical, especially in respect to the emoluments of those concerned in them.

Richard, his son, succeeds him.

The death of a great man, even in the most regular course of affairs, seems always to create a sort of pause in the movement of society; it is always a problem to be solved only by experiment, whether the mechanism of government may not be disordered by the shock, or have been deprived of some of its moving powers. But what change could be so great as that from Oliver Cromwell to his son! from one beneath the terror of whose name a nation had cowered and foreign princes grown pale, one trained in twenty eventful years of revolution, the first of his age in the field or in council, to a young man fresh from a country life, uneducated, unused to business, as little a statesman as a soldier, and endowed by nature with capacities by no means above the common. It seems to have been a mistake in Oliver, that with the projects he had long formed in his eldest son's favour, he should have taken so little pains to fashion his mind and manners for the exercise of sovereign power, while he had placed the second in a very eminent and arduous station; or that, if he despaired of Richard's capacity, he should have trusted him to encounter those perils of disaffection and conspiracy which it had required all his own vigilance to avert. But, whatever might be his plans, the sudden illness which carried him from the world left no time for completing them. The Petition and Advice had simply empowered him to appoint a successor, without prescribing the mode. It appeared consonant to law and reason that so important a trust should be executed in a notorious manner, and by a written instrument; or, if a verbal nomination might seem sufficient, it was at least to be expected that this should be authenticated by solemn and indisputable testimony. No proof, however, was ever given of Richard's appointment by his father, except a recital in the proclamation of the privy council, which, whether well founded or otherwise, did not carry conviction to the minds of the people; and this, even if we call it but an informality, aggravated the numerous legal and natural deficiencies of his title to the government.*

* Whitelock, 674; Ludlow, 611, 624. "Thurloe has seemed resolved to press him in his intervals to such a nomination (of a successor); but whether out of ap-

Lord Fauconberg writes in cipher to Henry Cromwell, on August 30, that

This very difference, however, in the personal qualifications of the father and the son, procured the latter some friends whom the former had never been able to gain. Many of the presbyterian party began to see the finger of God, as they called it, in his peaceable accession, and to think they owed subjection to one who came in neither by regicide, nor hypocrisy, nor violence.[y] Some cool-headed and sincere friends of liberty entertained similar opinions. Pierpoint, one of the wisest men in England, who had stood aloof from the protector's government till the scheme of restoring monarchy came into discussion, had great hopes, as a writer of high authority informs us, of settling the nation in the enjoyment of its liberties under the young man; who was "so flexible," says that writer, "to good counsels, that there was nothing desirable in a prince which might not have been hoped in him, but a great spirit and a just title; the first of which sometimes doth more hurt than good in a sovereign; the latter would have been supplied by the people's deserved approbation." Pierpoint believed that the restoration of the ancient family could not be effected without the ruin of the people's liberty, and of all who had been its champions; so that no royalist, he thought, who had any regard to his country, would attempt it: while this establishment of monarchy in Richard's person might reconcile that party, and compose all differences among men of weight and zeal for the public good.[z] He acted accordingly on those principles; and became, as well as his friend St. John, who had been discountenanced by Oliver, a steady supporter of the young protector's administration. These two, with Thurloe, Whitelock, lord Broghill, and a very few more, formed a small

Is supported by some prudent men.

prehensions to displease him if recovering, or others hereafter, if it should not succeed, he has not yet done it, nor do I believe will." Thurloe, however, announces on Sept. 4, that "his highness was pleased before his death to declare my lord Richard successor. He did it on Monday; and the Lord hath so ordered it that the council and army hath received him with all manner of affection. He is this day proclaimed, and hitherto there seems great face of peace; the Lord continue it." Thurloe State Papers, vii. 365, 372. Lord Fauconberg afterwards confirms the fact of Richard's nomination. P. 375; and see p. 415.

[y] "Many sober men that called his father no better than a traitorous hypocrite, did begin to think that they owed him [R. C.] subjection," &c. Baxter, 100.

[z] Hutchinson, 343. She does not name Pierpoint, but I have little doubt that he is meant.

phalanx of experienced counsellors around his unstable throne. And I must confess that their course of policy in sustaining Richard's government appears to me the most judicious that, in the actual circumstances, could have been adopted. Pregnant as the restoration of the exiled family was with incalculable dangers, the English monarchy would have revived with less lustre in the eyes of the vulgar, but with more security for peace and freedom, in the line of Cromwell. Time would have worn away the stains of ignoble birth and criminal usurpation; and the young man, whose misfortune has subjected him to rather an exaggerated charge of gross incapacity, would probably have reigned as well as most of those who are born in the purple.*

but opposed by a coalition.

But this termination was defeated by the combination of some who knew not what they wished, and of some who wished what they could never attain. The general officers who had been well content to make Cromwell the first of themselves, or greater than themselves by their own creation, had never forgiven his manifest design to reign over them as one of a superior order, and owing nothing to their pleasure. They had begun to cabal during his last illness. Though they did not oppose Richard's succession, they continued to hold meetings, not quite public, but exciting intense alarm in his council. As if disdaining the command of a clownish boy, they proposed that the station of lord general should be separated from that of protector, with the power over all commissions in the army, and conferred on Fleetwood; who, though his brother-in-law, was a certain instrument in their hands. The vain ambitious Lambert, aspiring, on the credit of some military reputation, to wield the sceptre of Cromwell, influenced this junto; while the commonwealth's party, some of whom were, or had been, in the army, drew over several of these ignorant and fanatical soldiers. Thurloe describes the posture of affairs in September and October, while all Europe was admiring the peaceable transmission of Oliver's power, as most alarming; and it may almost be said that Richard had

* Richard's conduct is more than once commended in the correspondence of Thurloe (p. 491, 497); and in fact he did nothing amiss during his short administration.

already fallen when he was proclaimed the lord protector of England.[b]

It was necessary to summon a parliament on the usual score of obtaining money. Lord Brog- Calls a parliament. hill had advised this measure immediately on Oliver's death,[c] and perhaps the delay might be rather prejudicial to the new establishment. But some of the council feared a parliament almost as much as they did the army. They called one, however, to meet Jan. 27, 1659, issuing writs in the ordinary manner to all boroughs which had been accustomed to send members, and consequently abandoning the reformed model of Cromwell. This Ludlow attributes to their expectation of greater influence among the small boroughs; but it may possibly be ascribed still more to a desire of returning by little and little to the ancient constitution, by eradicating the revolutionary innovations. The new parliament consisted of courtiers, as the Cromwell party were always denominated, of presbyterians, among whom some of cavalier principles crept in, and of republicans; the two latter nearly balancing, with their united weight, the ministerial majority.[d] They began with an oath of allegiance to the protector, as presented by the late parliament, which, as usual in such cases, his enemies generally took without scruple.[e] But upon a bill being

[b] Thurloe, vii. 320, et post, passim, in letters both from himself and lord Fauconberg. Thus, immediately on Richard's accession, the former writes to Henry Cromwell, "It hath pleased God hitherto to give his highness your brother a very easy and peaceable entrance upon his government. There is not a dog that wags his tongue, so great a calm we are in. . . . But I must needs acquaint your excellency that there are some secret murmurings in the army, as if his highness were not general of the army as his father was," &c. P. 374. Here was the secret: the officers did not like to fall back under the civil power, by obeying one who was not a soldier. This soon displayed itself openly; and lord Fauconberg thought the game was over as early as Sept. 28. P. 413. It is to be observed that Fauconberg was secretly a royalist, and might hope to bring over his brother-in-law.

[c] Thurloe, vii. 573.

[d] Lord Fauconberg says, "The commonwealth men in the parliament were very numerous, and beyond measure bold, but more than doubly overbalanced by the sober party; so that, though this make their result slow, we see no great cause as yet to fear." P. 612. And Dr. Barwick, a correspondent of lord Clarendon, tells him the republicans were the minority, but all speakers, zealous and diligent—it was likely to end in a titular protector without militia or negative voice. P. 615.

According to a letter from Allen Broderick to Hyde (Clar. St. Pap. iii. 443), there were 47 republicans, from 100 to 140 neuters or moderates (including many royalists) and 170 court lawyers or officers.

[e] Ludlow tells us that he contrived

offered for the recognition of Richard as the undoubted lord protector and chief magistrate of the commonwealth, they made a stand against the word recognise, which was carried with difficulty, and caused him the mortification of throwing out the epithet undoubted.[f] They subsequently discussed his negative voice in passing bills, which had been purposely slurred over in the Petition and Advice; but now everything was disputed. The thorny question as to the powers and privileges of the other house came next into debate. It was carried by 177 to 113 to transact business with them. To this resolution an explanation was added, that it was not thereby intended to exclude such peers as had been faithful to the parliament from their privilege of being duly summoned to be members of that house. The court supporting this not impolitic, but logically absurd, proviso, which confounded the ancient and modern systems of government, carried it by the small majority of 195 to 188.[g] They were stronger in rejecting an important motion, to make the approbation of the commons a preliminary to their transacting business with the persons now sitting in the other house as a house of parliament, by 183 voices to 146. But the opposition succeeded in inserting the words "during the present parliament," which left the matter still unsettled.[h] The sitting of the Scotch and Irish members was also unsuccessfully opposed. Upon the whole, the court party, notwithstanding this coalition of very heterogeneous interests against them, were sufficiently power-

to sit in the house without taking the oath, and that some others did the same. P. 619.

f Whitelock; Parliam. History, 1530, 1541.

g The numbers are differently, but, I suppose, erroneously stated in Thurloe, vii. 640. It is said, in a pamphlet of the time, that this clause was introduced to please the cavaliers, who acted with the court; Somers Tracts, vi. 482. Ludlow seems also to think that these parties were united in this parliament (p. 629); but this seems not very probable, and is contrary to some things we know. Clarendon had advised that the royalists should try to get into parliament, and there to oppose all raising of money and everything else that might tend to settle the government. Clar. State Papers, 411. This of course was their true game.

It is said that, Richard pressing the earl of Northumberland to sit in the other house, he declined, urging that, when the government was such as his predecessors had served under, he would serve him with his life and fortune. Id. 433.

h Parl. Hist. Journals, 27 Jan.; 14 18 Feb.; 1, 8, 21, 23, 28 March. The names of the tellers in these divisions show the connexions of leading individuals: we find indifferently presbyterian and republican names for the minority, as Fairfax, Lambert, Nevil, Haslerig, Townshend, Booth.

ful to disappoint the hopes which the royalist intriguers had entertained. A strong body of lawyers, led by Maynard, adhered to the government, which was supported also on some occasions by a part of the presbyterian interest, or, as then called, the moderate party; and Richard would probably have concluded the session with no loss of power, if either he or his parliament could have withstood the more formidable cabal of Wallingford House. This knot of officers, Fleetwood, Desborough, Berry, Sydenham, being the names most known among them, formed a coalition with the republican faction, who despaired of any success in parliament. The dissolution of that assembly was the main article of this league. Alarmed at the notorious caballing of the officers, the commons voted that, during the sitting of the parliament, there should be no general council, or meeting of the officers of the army, without leave of the protector and of both houses.[1] Such a vote

The army overthrow both.

[1] There seems reason to believe that Richard would have met with more support both in the house and among the nation, if he had not been oppressed by the odium of some of his father's counsellors. A general indignation was felt at those who had condemned men to death in illegal tribunals, whom the republicans and cavaliers were impatient to bring to justice. He was forced also to employ and to screen from vengeance his wise and experienced secretary Thurloe, master of all the secret springs that had moved his father's government, but obnoxious from the share he had taken in illegal and arbitrary measures. Petitions were presented to the house from several who had been committed to the Tower upon short written orders, without any formal warrant or expressed cause of commitment. In the case of one of these, Mr. Portman, the house resolved that his apprehension, imprisonment, and detention in the Tower was illegal and unjust: Journals, 26 Feb. A still more flagrant tyranny was that frequently practised by Cromwell, of sending persons disaffected to him as slaves to the West Indies. One Mr. Thomas petitioned the house of commons, complaining that he had been thus sold as a slave. A member of the court side justified it on the score of his being a malignant. Major-general Browne, a secret royalist, replied that he was nevertheless an Englishman and free-born. Thurloe had the presumption to say that he had not thought to live to see the day when such a thing as this, so justly and legally done by lawful authority, should be brought before parliament. Vane replied that he did not think to have seen the day when free-born Englishmen should be sold for slaves by such an arbitrary government. There were, it seems, not less than fifty gentlemen sold for slaves at Barbadoes. Clarendon State Papers, p. 447. The royalists had planned to attack Thurloe for some of these unjustifiable proceedings, which would have greatly embarrassed the government. Ibid. 423, 428. They hoped that Richard would be better disposed toward the king, if his three advisers, St. John, Thurloe, and Pierpoint, all implacable to their cause, could be removed. But they were not strong enough in the house. If Richard, however, had continued in power, he must probably have sacrificed Thurloe to public opinion; and the consciousness of this may have led this minister to advise the dissolution of the parliament, and perhaps to betray his master, from the suspicion of which he is not free.

It

could only accelerate their own downfall. Three days afterwards the junto of Wallingford House insisted with Richard that he should dissolve parliament; to which, according to the advice of most of his council, and perhaps by an overruling necessity, he gave his consent.[k] This was immediately followed by a declaration of the council of officers, calling back the long parliament, such as it had been expelled in 1653, to those seats which had been filled meanwhile by so many transient successors.[m]

It is not in general difficult for an armed force to destroy a government; but something else than the sword is required to create one. The military conspirators were destitute of any leader whom they would acknowledge, or who had capacity to go through the civil labours of sovereignty; Lambert alone excepted, who was lying in wait for another occasion. They might have gone on with Richard as a pageant of nominal authority. But their new allies, the common-

It ought to be remarked what an outrageous proof of Cromwell's tyranny is exhibited in this note. Many writers glide favourably over his administration, or content themselves with treating it as an usurpation which can furnish no precedent, and consequently does not merit particular notice; but the effect of this generality is, that the world forms an imperfect notion of the degree of arbitrary power which he exerted; and I believe there are many who take Charles I., and even Charles II., for greater violators of the laws than the protector. Neal and Harris are full of this dishonest bigotry. [Since this note was first printed the publication of Burton's Diary has confirmed its truth, which had rashly been called in question by a passionate and prejudiced reviewer. See vol. iv. p. 253, &c.]

k Richard advised with Broghill, Fiennes, Thurloe, and others of his council, all of whom, except Whitelock, who informs us of this, were in favour of the dissolution. This caused, he says, much trouble to honest men; the cavaliers and republicans rejoiced at it; many of Richard's council were his enemies. P. 177 The army at first intended to raise money by their own authority; but this was deemed impossible, and it was resolved to recall the long parliament. Lambert and Haslerig accordingly met Lenthall, who was persuaded to act again as speaker; though, if Ludlow is right, against his will, being now connected with the court, and in the pretended house of lords. The parliament now consisted of 91 members. Parl. Hist. 1547. Harris quotes a manuscript journal of Montague, afterwards earl of Sandwich, wherein it is said that Richard's great error was to dissolve the parliament, and that he might have overruled the army if he would himself have employed Ingoldsby, lord Faucouberg, and others, who were suspected to be for the king. Life of Charles II., 194. He afterwards, p. 203, quotes Calamy's Life of Howe, for the assertion that Richard stood out against his council, with Thurloe alone, that the parliament should not be dissolved. This is very unlikely.

m This was carried against the previous question by 163 to 87. Journals, Abr. 111. Some of the protector's friends were alarmed at so high a vote against the army, which did in fact bring the matter to a crisis. Thurloe, vii. 659, et post.

wealth's men, insisted upon restoring the long parliament.[n] It seemed now the policy, as much as duty, of the officers to obey that civil power they had set up; for to rule ostensibly was, as I have just observed, an impracticable scheme. But the contempt they felt for their pretended masters, and even a sort of necessity arising out of the blindness and passion of that little oligarchy, drove them to a step still more ruinous to their cause than that of deposing Richard, the expulsion once more of that assembly, now worn out and ridiculous in all men's eyes, yet seeming a sort of frail protection against mere anarchy and the terror of the sword. Lambert, the chief actor in this last act of violence, and indeed many of the rest, might plead the right of self-defence. The prevailing faction in the parliament, led by Haslerig, a bold and headstrong man, perceived that, with very inferior pretensions, Lambert was aiming to tread in the steps of Cromwell; and, remembering their neglect of opportunities, as they thought, in permitting the one to overthrow them, fancied that they would anticipate the other. Their intemperate votes cashiering Lambert, Desborough, and other officers, brought on, as every man of more prudence than Haslerig must have foreseen, an immediate revolution that crushed once more their boasted commonwealth.[o] They revived again a few months after, not by any

Expelled again.

and again restored.

[n] The army, according to Ludlow, had not made up their minds how to act after the dissolution of the parliament, and some were inclined to go on with Richard; but the republican party, who had coalesced with that faction of officers who took their denomination from Wallingford House, their place of meeting, insisted on the restoration of the old parliament; though they agreed to make some provision for Richard. Memoirs, p. 635-646. Accordingly it was voted to give him an income of 10,000*l.* per annum. Journals, July 16.

[o] Journals, Sept. 23, et post. Whitelock, 683. Parl. Hist. 1502. Thurloe, vii. 703, et post. Ludlow's account of this period is the most interesting part of his Memoirs. The chief officers, it appears from his narrative, were soon disgusted with their republican allies, and "behaved with all imaginable perverseness and insolence" in the council of state, whenever they came there, which was but seldom, scrupling the oath to be true to the commonwealth against Charles Stuart or any other person. P. 657. He censures, however, the violence of Haslerig, "a man of a disobliging temper, sour and morose of temper, liable to be transported with passion, and in whom liberality seemed to be a vice. Yet, to do him justice, I must acknowledge that I am under no manner of doubt concerning the rectitude and sincerity of his intentions." P. 718. Ludlow gave some offence to the hot-headed republicans by his half compliance with the army, and much disapproved the proceedings they adopted after their second restoration in December, 1659, against Vane and others. P. 800. Yet, though nominated on the committee

exertion of the people, who hated alike both parties, in their behalf, but through the disunion of their real masters, the army, and vented the impotent and injudicious rage of a desperate faction on all who had not gone every length on their side, till scarce any man of eminence was left to muster under the standard of Haslerig and his little knot of associates.[p]

Impossibility of establishing a republic.

I can by no means agree with those who find in the character of the English nation some absolute incompatibility with a republican constitution of government. Under favouring circumstances, it seems to me not at all incredible that such a polity might have existed for many ages in great prosperity, and without violent convulsion. For the English are, as a people, little subject to those bursts of passion which inflame the more imaginative multitude of southern climates, and render them both apt for revolutions and incapable of conducting them. Nor are they again of that sluggish and stationary temper which chokes all desire of improvement, and even all zeal for freedom and justice, through which some free governments have degenerated into corrupt oligarchies. The most conspicuously successful experiment of republican institutions (and those far more democratical than, according to the general theory of politics, could be reconciled with perfect tranquillity) has taken place in a people of English original; and though much must here be ascribed to the peculiarly fortunate situation of the nation to which I allude, we can hardly avoid giving some weight to the good sense and well-balanced temperament which have come in their inheritance with our laws and our language. But the establishment of free commonwealths depends much rather on temporary causes, the influence of persons and particular events, and all those intricacies in the course of Providence which we term accident, than on any general maxims that can become the basis of prior calculation. In the year 1659 it is manifest that no idea could be more chimerical than that of a republican settlement in England. The name, never familiar or venerable in English ears, was grown infinitely odious: it was

of safety, on the expulsion of the parliament in October, he never sat on it, as Vane and Whitelock did.

[p] Journals, and other authorities above cited.

associated with the tyranny of ten years, the selfish rapacity of the Rump, the hypocritical despotism of Cromwell, the arbitrary sequestrations of committee-men, the iniquitous decimations of military prefects, the sale of British citizens for slavery in the West Indies, the blood of some shed on the scaffold without legal trial, the tedious imprisonment of many with denial of the habeas corpus, the exclusion of the ancient gentry, the persecution of the Anglican church, the bacchanalian rant of sectaries, the morose preciseness of puritans, the extinction of the frank and cordial joyousness of the national character. Were the people again to endure the mockery of the good old cause, as the commonwealth's men affected to style the interests of their little faction, and be subject to Lambert's notorious want of principle, or to Vane's contempt of ordinances (a godly mode of expressing the same thing), or to Haslerig's fury, or to Harrison's fanaticism, or to the fancies of those lesser schemers who, in this utter confusion and abject state of their party, were amusing themselves with plans of perfect commonwealths, and debating whether there should be a senate as well as a representation; whether a fixed number should go out or not by rotation; and all those details of political mechanism so important in the eyes of theorists?[q] Every project of this description must have wanted what alone could give it either the pretext of legitimate existence or the chance of permanency, popular consent; the republican party, if we exclude those who would have had a protector, and those fanatics who expected the appearance of Jesus Christ, was incalculably small; not, perhaps, amounting in the whole nation to more than a few hundred persons.

Intrigues of the royalists.

The little court of Charles at Brussels watched with trembling hope those convulsive struggles of their enemies. During the protectorship of Oliver their best chance appeared to be, that some of the numerous schemes for his assassination might take effect. Their correspondence indeed, especially among the presbyterian or neutral party, became more

[q] The Rota Club, as it was called, was composed, chiefly at least of these dealers in new constitutions, which were debated in due form. Harrington was one of the most conspicuous.

extensive;[r] but these men were habitually cautious; and the marquis of Ormond, who went over to England in the beginning of 1658, though he reported the disaffection to be still more universal than he had expected, was forced to add that there was little prospect of a rising until foreign troops should be landed in some part of the country, an aid which Spain had frequently promised, but, with an English fleet at sea, could not very easily furnish.[s] The death of their puissant enemy brightened the visions of the royalists. Though the apparent peaceableness of Richard's government gave them some mortification, they continued to spread their toils through zealous emissaries, and found a very general willingness to restore the ancient constitution under its hereditary sovereign. Besides the cavaliers, who, though numerous and ardent, were impoverished and suspected, the chief presbyterians, lords Fairfax and Willoughby, the earls of Manchester and Denbigh, sir William Waller, sir George Booth, sir Ashley Cooper, Mr. Popham of Somerset, Mr. Howe of Gloucester, sir Horatio Townshend of Norfolk, with more or less of zeal and activity, pledged themselves to the royal cause.[t] Lord Fauconberg, a royalist by family, who had married a daughter of Cromwell, undertook the important office of working on his brothers-in-law, Richard and Henry, whose position, in respect to the army and republican party, was so hazardous. It seems, in fact, that Richard, even during his continuance in power, had not refused to hear the king's agents,[u] and hopes were entertained of him; yet at that

They unite with the presbyterians.

[r] Thurloe, vi. 579. Clarendon State Papers, 391, 395.

[s] Carte's Letters, ii. 118. In a letter of Ormond to Hyde about this time he seems to have seen into the king's character, and speaks of him severely: "I fear his immoderate delight in empty, effeminate, and vulgar conversations, is become an irresistible part of his nature," &c. Clarendon State Papers, iii. 387.

[t] Clarendon Papers, 391, 418, 460, et post. Townshend, a young man who seems to have been much looked up to, was not, in fact, a presbyterian, but is reckoned among them as not being a cavalier, having come of age since the war, and his family neutral.

[u] This curious fact appears for the first time, I believe, in the Clarendon State Papers, unless it is anywhere intimated in Carte's collection of the Ormond letters. In the former collection we find several allusions to it; the first is in a letter from Rumbold, a royalist emissary, to Hyde, dated Dec. 2, 1658, p. 421; from which I collect lord Fauconberg's share in this intrigue; which is also confirmed by a letter of Mordaunt to the king, in p. 423. "The lord Falconbridge protests that Cromwell is so remiss a person that he cannot play his own game, much less another man's, and is thereby discouraged from acting in business, having also many enemies who oppose his gaining either

time even he could not reasonably be expected to abandon his apparent interests; but soon after his fall, while his influence, or rather that of his father's memory, was still supposed considerable with Montagu, Monk, and Lockhart, they negotiated with him to procure the accession of those persons, and of his brother Henry, for a pension of 20,000*l.* a-year and a title.[x] It soon appeared, however, that those prudent veterans of revolution would not embark under such a pilot, and that Richard was not worth purchasing on the lowest terms. Even Henry Cromwell, with whom a separate treaty had been carried on, and who is said to have determined at one time to proclaim the king at Dublin, from want of courage, or, as is more probable, of seriousness in what must have seemed so unnatural an undertaking, submitted quietly to the vote of parliament that deprived him of the command of Ireland.[y]

The conspiracy, if indeed so general a concert for the restoration of ancient laws and liberties ought to have so equivocal an appellation, became ripe in the summer of 1659. The royalists were to appear in arms in different quarters, several principal towns to be seized; but, as the moment grew nigh, the courage of most began to fail. Twenty years of depression and continual failure mated the spirits of the cavaliers. The shade of Cromwell seemed to hover over and protect the wreck of his greatness. Sir George Booth, almost alone, rose in Cheshire; every other scheme, intended to be executed simultaneously, failing through the increased prudence of those concerned, or the precautions taken by the government on secret intelligence of the plots; and Booth, thus deserted, made

Conspiracy of 1659.

power or interest in the army or civil government, because they conceive his principles contrary to theirs. He says Thurloe governs Cromwell, and St. John and Pierpoint govern Thurloe; and therefore it is not likely he will think himself in danger till these tell him so, nor seek a diversion of it but by their counsels." Feb. 10, 1659. These ill-grounded hopes of Richard's accession to their cause appear in several other letters, and even Hyde seems to have given in to them, 434, 454, &c. Broderick, another active emissary of the royalists, fancied that the three above mentioned would restore the king if they dared, 477; but this is quite unlikely.

[x] P. 469. This was carried on through colonel Henry Cromwell, his cousin. It is said that Richard had not courage to sign the letters to Monk and his other friends, which he afterwards repented, 491. The intrigues still went on with him for a little longer. This was in May, 1659.

[y] Clarendon State Papers, 434, 500, et post. Thurloe, vi. 686. See also an enigmatical letter to Henry Cromwell, 629, which certainly hints at his union with the king; and Carte's Letters, ii. 293.

less resistance to Lambert than perhaps was in his power.[a] This discomfiture, of course, damped the expectations of the king's party. The presbyterians thought themselves ill-used by their new allies, though their own friends had been almost equally cautious.[a] Sir Richard Willis, an old cavalier, and in all the secrets of their conspiracy, was detected in being a spy both of Cromwell and of the new government: a discovery which struck consternation into the party, who could hardly trust any one else with greater security.[b] In a less favourable posture of affairs these untoward circumstances might have ruined Charles's hopes; they served, as it was, to make it evident that he must look to some more efficacious aid than a people's good wishes for his restoration.

The royalists in England, who played so deep a stake on the king's account, were not unnaturally desirous that he should risk something in the game, and continually pressed that either he or one of his brothers would land on the coast. His standard would become a rallying-point for the well-affected, and create such a demonstration of public sentiment as would overthrow the present unstable government. But Charles, not by nature of a chivalrous temper, shrunk from an enterprise which was certainly very hazardous, unless he could have obtained a greater assistance of troops from the Low Countries than was to be hoped.[c] He was as little inclined to permit the duke of York's engaging in it, on account of the differences that had existed between them, and his knowledge of an intrigue that was going forward in England, principally among the catholics, but with the mischievous talents of the duke of Buckingham at its head, to set up the duke instead of himself.[d] He

[a] Clar. State Papers, 552, 556, &c.

[a] Clarendon confesses, Life, p. 20, that the cavaliers disliked this whole intrigue with the presbyterians, which was planned by Mordaunt, the most active and intelligent agent that the king possessed in England. The former, doubtless, perceived that by extending the basis of the coalition they should lose all chance of indemnity for their own sufferings; besides which, their timidity and irresolution are manifest in all the Clarendon correspondence at this period. See particularly 491, 520.

[b] Willis had done all in his power to obstruct the rising. Clarendon was very slow in believing this treachery, of which he had at length conclusive proofs. 552, 562.

[c] Clar. Papers, 514, 530, 536, 543.

[d] Clarendon Papers, 425, 427, 458, 462, 475, 526, 579. It is evident that the catholics had greater hopes from the duke than from the king, and considered the

gave, however, fair words to his party, and continued for some time on the French coast, as if waiting for his opportunity. It was in great measure, as I suspect, to rid himself of this importunity that he set out on his long and very needless journey to the foot of the Pyrenees. Thither the two monarchs of France and Spain, wearied with twenty years of hostility without a cause and without a purpose, had sent their ministers to conclude the celebrated treaty which bears the name of those mountains. Charles had long cherished hopes that the first fruits of their reconciliation would be a joint armament to place him on the English throne; many of his adherents almost despaired of any other means of restoration. But Lewis de Haro was a timid statesman, and Mazarin a cunning one: there was little to expect from their generosity, and the price of assistance might probably be such as none but desperate and unscrupulous exiles would offer and the English nation would with unanimous indignation reject. It was well for Charles that he contracted no public engagement with these foreign powers, whose co-operation must either have failed of success or have placed on his head a degraded and unstable crown. The full toleration of popery in England, its establishment in Ireland, its profession by the sovereign and his family, the surrender of Jamaica, Dunkirk, and perhaps the Norman islands, were conditions on which the people might have thought the restoration of the Stuart line too dearly obtained.

former as already their own. A remarkable letter of Morley to Hyde, April 24, 1659, p. 458, shows the suspicions already entertained of him by the writer in point of religion; and Hyde is plainly not free from apprehension that he might favour the scheme of supplanting his brother. The intrigue might have gone a great way, though we may now think it probable that their alarm magnified the danger. "Let me tell you," says sir Antony Ashley Cooper in a letter to Hyde, "that Wildman is as much an enemy now to the king as he was before a seeming friend; yet not upon the account of a commonwealth, for his ambition meets with every-day repulses and affronts from that party; but upon a finer spun design of setting up the interest of the duke of York against the king; in which design I fear you will find confederated the duke of Bucks, who perhaps may draw away with him lord Fairfax, the presbyterians, levellers, and many catholics. I am apt to think these things are not transacted without the privity of the queen; and I pray God that they have not an ill influence upon your affairs in France." 475. Buckingham was surmised to have been formally reconciled to the church of Rome. 427. Some supposed that he, with his friend Wildman, were for a republic. But such men are for nothing but the intrigue of the moment. These projects of Buckingham to set up the duke of York are hinted at in a pamphlet by Shaftesbury or one of his party, written about 1680. Somers Tracts, viii. 312.

It was a more desirable object for the king to bring over, if possible, some of the leaders of the commonwealth. Except Vane, accordingly, and the decided republicans, there was hardly any man of consequence whom his agents did not attempt to gain, or, at least, from whom they did not entertain hopes. Three stood at this time conspicuous above the rest, not all of them in ability, but in apparent power of serving the royal cause by their defection—Fleetwood, Lambert, and Monk. The first had discovered, as far as his understanding was capable of perceiving anything, that he had been the dupe of more crafty men in the cabals against Richard Cromwell, whose complete fall from power he had neither designed nor foreseen. In pique and vexation he listened to the overtures of the royalist agents, and sometimes, if we believe their assertions, even promised to declare for the king.[e] But his resolutions were not to be relied upon, nor was his influence likely to prove considerable; though, from his post of lieutenant-general of the army, and long-accustomed precedence, he obtained a sort of outward credit far beyond his capacity. Lambert was of a very different stamp; eager, enterprising, ambitious, but destitute of the qualities that inspire respect or confidence. Far from the weak enthusiasm of Fleetwood, he gave offence by displaying less show of religion than the temper of his party required, and still more by a current suspicion that his secret faith was that of the church of Rome, to which the partiality of the catholics towards him gave support.[f] The crafty unfettered ambition of Lambert rendered it not unlikely that, finding his own schemes of sovereignty impracticable, he would make terms with the king; and there were not wanting those who recommended the latter to secure his services by the offer of marrying his daughter,[g] but

[e] Hyde writes to the duke of Ormond, "I pray inform the king that Fleetwood makes great professions of being converted, and of a resolution to serve the king upon the first opportunity." Oct. 11, 1659. Carte's Letters, ii. 231. See Clarendon State Papers, 551 (Sept. 2) and 577. But it is said afterwards that he had "not courage enough to follow the honest thoughts which some time possess him," 592 (Oct. 31), and that Manchester, Popham, and others, tried what they could do with Fleetwood; but, "though they left him with good resolutions, they were so weak as not to continue longer than the next temptation." 635 (Dec. 27).

[f] Id. 588. Carte's Letters, ii. 225.

[g] Lord Hatton, an old royalist, suggested this humiliating proposition in terms scarcely less so to the heir of Cerdic and Fergus. "The race is a *very good*

it does not appear that any actual overtures were made on either side.

There remained one man of eminent military reputation, in the command of a considerable insulated army, to whom the royalists anxiously looked with alternate hope and despondency. Monk's early connections were with the king's party, among whom he had been defeated and taken prisoner by Fairfax at Namptwich. Yet even in this period of his life he had not escaped suspicions of disaffection, which he effaced by continuing in prison till the termination of the war in England. He then accepted a commission from the parliament to serve against the Irish, and now, falling entirely into his new line of politics, became strongly attached to Cromwell, by whom he was left in the military government, or rather viceroyalty, of Scotland, which he had reduced to subjection, and kept under with a vigorous hand. Charles had once, it is said, attempted to seduce him by a letter from Cologne, which he instantly transmitted to the protector.[h] Upon Oliver's death he wrote a very sensible letter to Richard Cromwell, containing his advice for the government. He recommends him to obtain the affections of the moderate presbyterian ministers, who have much influence over the people, to summon to his house of lords the wisest and most faithful of the old nobility and some of the leading gentry, to diminish the number of superior officers in the army by throwing every two regiments into one, and to take into his council as his chief advisers Whitelock, St. John, lord Broghill, sir Richard Onslow, Pierpoint, and Thurloe.[i] The judiciousness of this

Interference of Monk.

gentleman's family, and kings have condescended to marry subjects. The lady is pretty, of an extraordinary sweetness of disposition, and very virtuously and ingenuously disposed; the father is a person, set aside his unhappy engagement, of very great parts and noble inclinations." Clarendon State Papers, 592. Yet, after all, Miss Lambert was hardly more a mésalliance than Hortense Mancini, whom Charles had asked for in vain.

h Biogr. Brit., art. MONK. The royalists continued to entertain hopes of him, especially after Oliver's death. Clarendon Papers, iii. 393, 395, 396. In a sensible letter of Colepepper to Hyde, Sept. 20, 1658, he points out Monk as able alone to restore the king, and not absolutely averse to it, either in his principles or affections; kept hitherto by the vanity of adhering to his professions, and by his affection to Cromwell, the latter whereof is dissolved both by the jealousies he entertained of him, and by his death, &c. Id. 412.

i Thurloe, vii. 387. Monk wrote about the same time against the earl of Argyle, as not a friend to the government: p. 584. Two years afterwards he took away his life as being too much so.

advice is the surest evidence of its sincerity, and must leave no doubt on our minds that Monk was at that time very far from harbouring any thoughts of the king's restoration.

His dissimulation.

But when, through the force of circumstances and the deficiencies in the young protector's capacity, he saw the house of Cromwell for ever fallen, it was for Monk to consider what course he should follow, and by what means the nation was to be rescued from the state of anarchy that seemed to menace it. That very different plans must have passed through his mind before he commenced his march from Scotland, it is easy to conjecture; but at what time his determination was finally taken we cannot certainly pronounce.* It

* If the account of his chaplain, Dr. Price, republished in Maseres' Tracts, vol. ii., be worthy of trust, Monk gave so much encouragement to his brother, a clergyman, secretly despatched to Scotland by sir John Grenvil, his relation, in June, 1659, as to have approved sir George Booth's insurrection, and to have been on the point of publishing a declaration in favour of it. P. 718. But this is flatly in contradiction of what Clarendon asserts, that the general not only sent away his brother with no hopes, but threatened to hang him if he came again on such an errand. And, in fact, if anything so favourable as what Price tells us had occurred, the king could not fail to have known it. See Clarendon State Papers, iii. 543. This throws some suspicion on Price's subsequent narrative (so far as it professes to relate the general's intentions); so that I rely far less on it than on Monk's own behaviour, which seems irreconcilable with his professions of republican principles. It is, however, an obscure point of history, which will easily admit of different opinions.

The story told by Locke, on lord Shaftesbury's authority, that Monk had agreed with the French ambassador to take on himself the government, wherein he was to have the support of Mazarin, and that his wife, having overheard what was going forward, sent notice to Shaftesbury, who was thus enabled to frustrate the intrigue (Locke's Works, iii. 456), seems to have been confirmed lately by Mr. D'Israeli, in an extract from the manuscript memoirs of sir Thomas Browne (Curiosities of Literature, N. S., vol. ii.), but in terms so nearly resembling those of Locke, that it may be suspected of being merely an echo. It is certain, as we find by Phillips's continuation of Baker's Chronicle (said to be assisted in this part by sir Thomas Clarges, Monk's brother-in-law), that Bourdeaux, the French ambassador, did make such overtures to the general, who absolutely refused to enter upon them; but, as the writer admits, received a visit from the ambassador on condition that he should propose nothing in relation to public matters. I quote from Kennet's Register, 85. But, according to my present impression, this is more likely to have been the foundation of Shaftesbury's story, who might have heard from Mrs. Monk the circumstance of the visit, and conceived suspicions upon it, which he afterwards turned into proofs. It was evidently not in Monk's power to have usurped the government after he had let the royalist inclinations of the people show themselves; and he was by no means of a rash character. He must have taken his resolution when the secluded members were restored to the house, Feb. 21; and this alleged intrigue with Mazarin could hardly have been so early.

It may be added that in one of the pamphlets about the time of the exclusion bill, written by Shaftesbury himself, or one of his party (Somers Tracts, viii.

would be the most honourable supposition to believe that he was sincere in those solemn protestations of adherence to the commonwealth which he poured forth, as well during his march as after his arrival in London; till discovering, at length, the popular zeal for the king's restoration, he concurred in a change which it would have been unwise, and perhaps impracticable, to resist. This, however, seems not easily reconcilable to Monk's proceedings in new-modelling his army, and confiding power, both in Scotland and England, to men of known intentions towards royalty; nor did his assurances of support to the republican party become less frequent or explicit at a time when every one must believe that he had taken his resolution, and even after he had communicated with the king. I incline, therefore, upon the whole, to believe that Monk, not accustomed to respect the parliament, and incapable, both by his temperament and by the course of his life, of any enthusiasm for the name of liberty, had satisfied himself as to the expediency of the king's restoration from the time that the Cromwells had sunk below his power to assist them, though his projects were still subservient to his own security, which he was resolved not to forfeit by any premature declaration or unsuccessful enterprise. If the coalition of cavaliers and presbyterians and the strong bent of the entire nation had not convinced this wary dissembler that he could not fail of success, he would have continued true to his professions as the general of a commonwealth, content with crushing his rival Lambert and breaking that fanatical interest which he most disliked. That he aimed at such a sovereignty as Cromwell had usurped has been the natural conjecture of many, but does not appear to me either warranted by any presumptive evidence, or consonant to the good sense and phlegmatic temper of Monk.

At the moment when, with a small but veteran army of 7000 men, he took up his quarters in London, it seemed to be within his arbitrement which way the scale should preponderate. On one side were the wishes of the nation, but restrained by fear; on the other, esta-

338), he is hinted to have principally brought about the Restoration; "without whose courage and dexterity some men, the most highly rewarded, had done otherwise than they did." But this still depends on his veracity.

blished possession, maintained by the sword, but rendered precarious by disunion and treachery. It is certainly very possible that, by keeping close to the parliament, Monk might have retarded, at least for a considerable time, the great event which has immortalized him. But it can hardly be said that the king's restoration was rather owing to him than to the general sentiments of the nation, and almost the necessity of circumstances, which had already made every judicious person anticipate the sole termination of our civil discord which they had prepared. Whitelock, who, incapable of refusing compliance with the ruling power, had sat in the committee of safety established in October, 1659, by the officers who had expelled the parliament, has recorded a curious anecdote, whence we may collect how little was wanting to prevent Monk from being the great mover in the restoration. He had for some time, as appears by his journal, entertained a persuasion that the general meditated nothing but the king's return, to which he was doubtless himself well inclined, except from some apprehension for the public interest, and some also for his own. This induced him to have a private conference with Fleetwood, which he enters as of the 22nd December, 1659, wherein, after pointing out the probable designs of Monk, he urged him either to take possession of the Tower and declare for a free parliament, in which he would have the assistance of the city, or to send some trusty person to Breda, who might offer to bring in the king upon such terms as should be settled. Both these propositions were intended as different methods of bringing about a revolution which he judged to be inevitable. "By this means," he contended, "Fleetwood might make terms with the king for preservation of himself and his friends, and of that cause, in a good measure, in which they had been engaged; but if it were left to Monk, they and all that had been done would be left to the danger of destruction. Fleetwood then asked me, 'if I would be willing to go myself upon this employment?' I answered, 'that I would go if Fleetwood thought fit to send me.' And after much other discourse to this effect Fleetwood seemed fully satisfied to send me to the king, and desired me to go and prepare myself forthwith for the journey; and that in the mean time

Fleetwood and his friends would prepare the instructions for me, so that I might begin my journey this evening or to-morrow morning early.

"I, going away from Fleetwood, met Vane, Desborough, and Berry in the next room, coming to speak with Fleetwood, who thereupon desired me to stay a little; and I suspected what would be the issue of their consultation, and within a quarter of an hour Fleetwood came to me, and in much passion said to me, 'I cannot do it! I cannot do it!' I desired his reason why he could not do it? He answered, 'Those gentlemen have remembered me, and it is true, that I am engaged not to do any such thing without my lord Lambert's consent.' I replied, 'that Lambert was at too great a distance to have his consent to this business, which must be instantly acted.' Fleetwood again said, 'I cannot do it without him.' Then I said, 'You will ruin yourself and your friends.' He said, 'I cannot help it.' Then I told him I must take my leave, and so we parted."[m]

Secluded members return to their seats.

Whatever might have been in the power of Monk by adhering to his declarations of obedience to the parliament, it would have been too late for him, after consenting to the restoration of the secluded members to their seats on February 21, 1660, to withstand the settlement which it seems incredible that he should not at that time have desired. That he continued for at least six weeks afterwards in a course of astonishing dissimulation, so as to deceive in a great measure almost all the royalists, who were distrusting his intentions at the very moment when he made his first and most private tender of service to the king through Sir John Grenvil about the beginning of April, might at first seem rather to have proceeded from a sort of inability to shake off his inveterate reservedness than from consummate prudence and discretion; for any sudden risings in the king's favour, or an intrigue in the council of state, might easily have brought about the Restoration without his concurrence; and, even as it was, the language held in the house of commons before their dissolution, the votes expunging all that appeared on their journals against the regal government and the

[m] Whitelock, 680

house of lords,[a] and, above all, the course of the elections for the new parliament, made it sufficiently evident that the general had delayed his assurances of loyalty till they had lost a part of their value. It is, however, a full explanation of Monk's public conduct that he was not secure of the army, chiefly imbued with fanatical

[a] The engagement was repealed March 13. This was of itself tantamount to a declaration in favour of the king, though perhaps the previous order of March 5, that the solemn league and covenant should be read in churches, was still more so. Prynne was the first who had the boldness to speak for the king, declaring his opinion that the parliament was dissolved by the death of Charles I.; he was supported by one or two more. Clar. Papers, 696. Thurloe, vii. 854. Carte's Letters, ii. 312. Prynne wrote a pamphlet advising the peers to meet and issue writs for a new parliament, according to the provisions of the triennial act, which, in fact, was no bad expedient. Somers Tracts, vi. 534.

A speech of sir Harbottle Grimston before the close of the parliament, March, 1660, is more explicit for the king's restoration than anything which I have seen elsewhere; and as I do not know that it has been printed, I will give an extract from the Harleian MS. 1579.

He urges it as necessary to be done by them, and not left for the next parliament, who all men believe would restore him. "This is so true and so well understood, that we all believe that, whatsoever our thoughts are, this will be the opinion of the succeeding parliament, whose concerns as well as affections will make them active for his introduction. And I appeal, then, to your own judgments whether it is likely that those persons, as to their particular interest more unconcerned, and probably less knowing in the affairs of the nation, can or would obtain for any those terms or articles as we are yet in a capacity to procure both for them and us. I must confess sincerely that it would be as strange to me as a miracle, did I not know that God infatuates whom he designs to destroy, that we can see the king's return so unavoidable, and yet be no more studious of serving him, or at least ourselves, in the managing of his recall.

"The general, that noble personage to whom under God we do and must owe all the advantages of our past and future changes, will be as far from opposing us in the design, as the design is removed from the disadvantage of the nation. He himself is, I am confident, of the same opinion; and if he has not yet given notice of it to the house, it is not that he does not look upon it as the best expedient; but he only forbears to propose it, that he might not seem to necessitate us, and by an over early discovery of his own judgment be thought to take from us the freedom of ours."

In another place he says, "That the recalling of our king in this only way (for composure of affairs) is already grown almost as visible as true; and, were it but confessed of all of whom it is believed, I should quickly hear from the greatest part of this house what now it hears alone from me. Had we as little reason to fear as we have too much, that, if we bring not in the king, he either already is, or shortly may be, in a capacity of coming in unsent for, methinks the very knowledge of his right were enough to keep just persons, such as we would be conceived to be, from being accessary to his longer absence. We are already, and but justly, reported to have been the occasion of our prince's banishment; we may, then, with reason and equal truth, for aught I know, be thought to have been the contrivers of it, unless we endeavour the contrary, by not suffering the mischief to continue longer which is in our power to remove."

Such passages as these, and the general tenor of public speeches, sermons, and pamphlets, in the spring of 1660, show how little Monk can be justly said to have restored Charles II., except so far as he did not persist in preventing it so long as he might have done.

principles, and bearing an inveterate hatred towards the name of Charles Stuart. A correspondent of the king writes to him on the 28th of March, "The army is not yet in a state to hear your name publicly."[o] In the beginning of that month many of the officers, instigated by Haslerig and his friends, had protested to Monk against the proceedings of the house, insisting that they should abjure the king and house of lords. He repressed their mutinous spirit, and bade them obey the parliament, as he should do.[p] Hence he redoubled his protestations of abhorrence of monarchy, and seemed for several weeks, in exterior demonstrations, rather the grand impediment to the king's restoration than the one person who was to have the credit of it.[q] Meanwhile he silently proceeded in displacing the officers whom he could least trust, and disposing the regiments near to the metropolis or at a distance, according to his knowledge of their tempers; the parliament having given him a commission as lord-general of all the forces in the three kingdoms.[r] The commissioners appointed by parliament for raising the militia in each county were chiefly gentlemen of the presbyterian party; and there seemed likely to be such a considerable force under their orders as might rescue the nation from its ignominious servitude to the army. In fact, some of the royalists expected that the great question would not be carried

[o] Clarendon State Papers, 711.

[p] Id. 696.

[q] Id. 678, et post. He wrote a letter (Jan. 21) to the gentry of Devon, who had petitioned the speaker for the readmission of the secluded members, objecting to that measure as likely to bring in monarchy, very judicious, and with an air of sincerity that might deceive any one; and after the restoration of these secluded members, he made a speech to them (Feb. 21) strongly against monarchy; and that so ingenuously, upon such good reasons, so much without invective or fanaticism, that the professional hypocrites, who were used to their own tone of imposture, were deceived by his. Cromwell was a mere bungler to him. See these in Harris's Charles II., 296, or Somers Tracts, vi. 551. It cannot be wondered at that the royalists were exasperated at Monk's behaviour. They published abusive pamphlets against him in February, from which Kennet, in his Register, p. 53, gives quotations:—"Whereas he was the common hopes of all men, he is now the common hatred of all men, as a traitor more detestable than Oliver himself, who, though he manacled the citizens' hands, yet never took away the doors of the city," and so forth. It appears by the letters of Mordaunt and Broderick to Hyde, and by those of Hyde himself in the Clarendon Papers, that they had no sort of confidence in Monk till near the end of March; though Barwick, another of his correspondents, seems to have had more insight into the general's designs (Thurloe, 852, 860, 870), who had expressed himself to a friend of the writer, probably Clobery, fully in favour of the king, before March 19.

[r] Clar. 699, 705. Thurloe, vii. 860, 870.

without an appeal to the sword.[s] The delay of Monk in privately assuring the king of his fidelity is still not easy to be explained, but may have proceeded from a want of confidence in Charles's secrecy, or that of his counsellors. It must be admitted that lord Clarendon, who has written with some minuteness and accuracy this important part of his History, has more than insinuated (especially as we now read his genuine language, which the ill-faith of his original editors had shamefully garbled) that Monk entertained no purposes in the king's favour till the last moment; but a manifest prejudice that shows itself in all his writings against the general, derived partly from offence at his extreme reserve and caution during this period, partly from personal resentment of Monk's behaviour at the time of his own impeachment, greatly takes off from the weight of the noble historian's judgment.[t]

Difficulties about the restoration.

The months of March and April, 1660, were a period of extreme inquietude, during which every one spoke of the king's restoration as imminent, yet none could distinctly perceive by what means it would be effected, and much less how the difficulties of such a settlement could be overcome.[u] As the mo-

[s] A correspondent of Ormond writes, March 16, "This night the fatal long parliament hath dissolved itself. All this appears well; but I believe we shall not be settled upon our ancient foundations without a war, for which all prepare vigorously and openly." Carte's Letters, ii. 513. It appears also, from a letter of Massey to Hyde, that a rising in different counties was intended. Thurloe, 854.

[t] After giving the substance of Monk's speech to the house, recommending a new parliament, but insisting on commonwealth principles, Clarendon goes on: "There was no dissimulation in this, in order to cover and conceal his good intentions to the king; for without doubt he had not to this hour entertained any purpose or thought to serve him, but was really of the opinion he expressed in his paper, that it was a work impossible; and desired nothing but that he might see a commonwealth established on such a model as Holland was, where he had been bred, and that himself might enjoy the authority and place which the prince of Orange possessed in that government."

[u] The Clarendon and Thurloe Papers are full of more proofs of this that can be quoted, and are very amusing to read, as a perpetually shifting picture of hopes and fears, and conjectures right or wrong. Pepys's Diary also, in these two months, strikingly shows the prevailing uncertainty as to Monk's intentions, as well as the general desire of having the king brought in. It seems plain that, if he had delayed a very little longer, he would have lost the whole credit of the restoration. All parties began to crowd in with addresses to the king in the first part of April, before Monk was known to have declared himself. Thurloe, among others, was full of his offers, though evidently anxious to find out whether the king had an interest with Monk, p. 898. The royalists had long entertained hopes, from time to time, of this deep politician; but it is certain he never wished well to their cause, and, with St. John and Pierpoint, had been most zealous, to the last moment that it seemed practicable, against the restoration. There had been, so late as February, 1660, or even after-

ment approached, men turned their attention more to the obstacles and dangers that lay in their way. The restoration of a banished family, concerning whom they knew little, and what they knew not entirely to their satisfaction, with ruined, perhaps revengeful, followers; the returning ascendancy of a distressed party, who had sustained losses that could not be repaired without fresh changes of property, injuries that could not be atoned without fresh severities; the conflicting pretensions of two churches—one loth to release its claim, the other to yield its possession; the unsettled dissensions between the crown and parliament, suspended only by civil war and usurpation; all seemed pregnant with such difficulties that prudent men could hardly look forward to the impending revolution without some hesitation and anxiety.* Hence Pierpoint, one of the wisest statesmen in

wards, a strange plan of setting up again Richard Cromwell, wherein not only these three, but Montague, Jones, and others, were thought to be concerned, erroneously no doubt as to Montague. Clarendon State Papers, 693. Carte's Letters, ii. 310, 330. "One of the greatest reasons they alleged was, that the king's party, consisting altogether of indigent men, will become powerful by little and little to force the king, whatever be his own disposition, to break any engagement he can now make; and since the nation is bent on a single person, none will combine all interests so well as Richard." This made Monk, it is said, jealous of St. John, so that he was chosen at Cambridge to exclude him. In a letter of Thurloe to Downing at the Hague, April 6, he says "that many of the presbyterians are alarmed at the prospect, and thinking how to keep the king out without joining the sectaries." vii. 887. This could hardly be achieved but by setting up Richard. Yet that, as is truly said in one of the letters quoted, was ridiculous. None were so conspicuous and intrepid on the king's side as the presbyterian ministers. Reynolds preached before the lord mayor, Feb. 28, with manifest allusion to the restoration; Gauden (who may be reckoned on that side, as conforming to it) on the same day much more explicitly. Kennet's Register, 69. Sharp says, in a letter to a correspondent in Scotland, that he, Ash, and Calamy, had a long conversation with Monk, March 11, "and convinced him a commonwealth was impracticable, and to our sense sent him off that sense he had hitherto maintained, and came from him as being satisfied of the necessity of dissolving this house, and calling a new parliament." Id. p. 81. Baxter thinks the presbyterian ministers, together with Clarges and Morrice, turned Monk's resolution, and induced him to declare for the king. Life, p. 2. This is a very plausible conjecture, though I incline to think Monk more disposed that way by his own judgment or his wife's. But she was influenced by the presbyterian clergy. They evidently deserved of Charles what they did not meet with.

* The royalists began too soon with threatening speeches, which well-nigh frustrated their object. Id. 721, 722, 727. Carte's Letters, 318. Thurloe, 887. One Dr. Griffith published a little book vindicating the late king in his war against the parliament, for which the ruling party were by no means ripe; and having justified it before the council, was committed to the Gate-house, early in April. Id. ibid. These imprudences occasioned the king's declaration from Breda. Somers Tracts, vi. 562. Another also was published, April 25, 1660, signed by several peers, knights, divines, &c., of the royalist party, disclaiming all

England, though not so far implicated in past transactions as to have much to fear, seems never to have overcome his repugnance to the recall of the king; and I am by no means convinced that the slowness of Monk himself was not in some measure owing to his sense of the embarrassments that might attend that event. The presbyterians, generally speaking, had always been on their guard against an unconditional restoration. They felt much more of hatred to the prevailing power than of attachment to the house of Stuart, and had no disposition to relinquish, either as to church or state government, those principles for which they had fought against Charles I. Hence they began, from the very time that they entered into the coalition (that is, the spring and summer of 1659), to talk of the treaty of Newport as if all that had passed since their vote of the 5th December, 1648, that the king's concessions were a sufficient ground whereon to proceed to the settlement of the kingdom, had been like a hideous dream, from which they had awakened to proceed exactly in their former course.[7] The council of state, appointed on the 23rd of February, two days after the return of the secluded members, consisted principally of this party. And there can, I conceive, be no question that, if Monk had continued his neutrality to the last, they would, in conjunction with the new parliament, have sent over propositions for the king's acceptance. Meetings were held of the chief presbyterian lords, Manchester,

private passions and resentments. Kennet's Register, 120. Clar. vii. 471. But these public professions were weak disguises, when belied by their current language. See Baxter, 217. Marchmont Needham, in a tract entitled 'Interest will not Lye,' (written in answer to an artful pamphlet ascribed to Fell, afterwards bishop of Oxford, and reprinted in Maseres' Tracts, 'The Interest of England stated'), endeavoured to alarm all other parties, especially the presbyterians, with representations of the violence they had to expect from that of the king. See Harris's Charles II., 268.

[7] Proofs of the disposition among this party to revive the treaty of the Isle of Wight occur perpetually in the Thurloe and Clarendon Papers, and in those published by Carte. The king's agents in England evidently expected nothing better; and were, generally, speaking, much for his accepting the propositions. "The presbyterian lords," says sir Allen Broderic to Hyde, "with many of whom I have spoken, pretend that, should the king come in upon any such insurrection, abetted by those of his own party, he would be more absolute than his father was in the height of his prerogative. Stay therefore, say they, till we are ready; our numbers so added will abundantly recompense the delay, rendering what is now extremely doubtful morally certain, and establishing his throne upon the true basis, liberty and property." July 16, 1659. Clar. State Papers, 527.

Northumberland, Bedford, Say, with Pierpoint (who, finding it too late to prevent the king's return, endeavoured to render it as little dangerous as possible), Hollis, Annesley, sir William Waller, Lewis, and other leaders of that party. Monk sometimes attended on these occasions, and always urged the most rigid limitations.[z] His sincerity in this was the less suspected, that his wife, to whom he was notoriously submissive, was entirely presbyterian, though a friend to the king; and his own preference of that sect had always been declared in a more consistent and unequivocal manner than was usual to his dark temper.

These projected limitations, which but a few weeks before Charles would have thankfully accepted, seemed now intolerable; so rapidly do men learn, in the course of prosperous fortune, to scorn what they just before hardly presumed to expect. Those seemed his friends, not who desired to restore him, but who would do so at the least sacrifice of his power and pride. Several of the council, and others in high posts, sent word that they would resist the imposition of unreasonable terms.[a] Monk himself redeemed his ambiguous and dilatory behaviour by taking the restoration, as it were, out of the hands of the council, and suggesting the judicious scheme of anticipating their proposals by the king's letter to the two houses of parliament. For this purpose he had managed, with all his dissembling pretences of commonwealth principles, or, when he was (as it were)

[z] Clarendon, Hist. of Rebellion, vii. 440. State Papers, 705, 729. "There is so insolent a spirit among some of the nobility," says Clarendon, about the middle of February, "that I really fear it will turn to an aristocracy; Monk inclining that way too. My opinion is clear that the king ought not to part with the church, crown, or friends' lands, lest he make my lord of Northumberland his equal, nay, perhaps his superior." P. 680.

[a] Downing, the minister at the Hague, was one of these. His overtures to the king were as early as Monk's, at the beginning of April; he declared his wish to see his majesty restored on good terms, though many were desirous to make him a doge of Venice. Carte's Letters, ii. 320. See also a remarkable letter of the king to Monk (dated May 21; but I suspect he used the new style, therefore read May 11), intimating what a service it would be to prevent the imposition of any terms. Clar. 746. And another from him to Morrice, of the same tenor, May 20 (N. S.), 1660, and hinting that his majesty's friends in the house had complied with the general in all things, according to the king's directions, departing from their own sense, and restraining themselves from pursuing what they thought most for his service. Thurloe, vii. 912. This perhaps referred to the indemnity and other provisions then pending in the commons, or rather to the delay of a few days before the delivery of sir John Grenvil's message.

compelled to lay them aside, of insisting on rigorous limitations, to prevent any overtures from the council, who were almost entirely presbyterian, before the meeting of parliament, which would have considerably embarrassed the king's affairs.[b] The elections meantime had taken a course which the faction now in power by no means regarded with satisfaction. Though the late house of commons had passed a resolution that no person who had assisted in any war against the parliament since 1642, unless he should since have manifested his good affection towards it, should be capable of being elected, yet this, even if it had been regarded, as it was not, by the people, would have been a feeble barrier against the royalist party, composed in a great measure of young men who had grown up under the commonwealth, and of those who, living in the parliamentary counties during the civil war, had paid a reluctant obedience to its power.[c] The tide ran so strongly for the king's friends, that it was as much as the presbyterians could effect, with the weight of government in their hands, to obtain

b "Monk came this day (about the first week of April) to the council, and assured them that, notwithstanding all the appearance of a general desire of kingly government, yet it was in nowise his sense, and that he would spend the last drop of his blood to maintain the contrary." Extract of a letter from Thurloe to Downing. Carte's Letters, *ii.* 322. "The council of state are utterly ignorant of Monk's treating with the king; and surely, as the present temper of the council of state is now, and may possibly be also of the parliament, by reason of the presbyterian influence upon both, I should think the first chapman will not be the worst, who perhaps will not offer so good a rate in conjunction with the company as he may give to engross the commodity." Clar. 722, April 6. This sentence is a clue to all the intrigue. It is said soon afterwards (p. 726, April 11) that the presbyterians were much troubled at the course of the elections, which made some of the council of state again address themselves to Monk for his consent to propositions they would send to the king; but he absolutely refused, and said he would leave all to a free parliament, as he had promised the nation. Yet, though the elections went as well as the royalists could reasonably expect, Hyde was dissatisfied that the king was not restored without the intervention of the new parliament; and this may have been one reason of his spleen against Monk. P. 726, 731.

c A proposed resolution, that those who had been on the king's side, *or their sons*, should be disabled from voting at elections, was lost by 93 to 56, the last effort of the expiring long parliament. Journals, 13th March. The electors did not think themselves bound by this arbitrary exclusion of the cavaliers from parliament; several of whom (though not perhaps a great number within the terms of the resolution) were returned. Massey, however, having gone down to stand for Gloucester, was put under arrest by order of the council of state. Thurloe, 887. Clarendon, who was himself not insensible to that kind of superstition, had fancied that anything done at Gloucester by Massey for the king's service would make a powerful impression on the people.

about an equality of strength with the cavaliers in the convention parliament.[d]

It has been a frequent reproach to the conductors of this great revolution, that the king was restored without those terms and limitations which might secure the nation against his abuse of their confidence; and this, not only by contemporaries who had suffered by the political and religious changes consequent on the Restoration, or those who, in after times, have written with some prepossession against the English church and constitutional monarchy, but by the most temperate and reasonable men; so that it has become almost regular to cast on the convention parliament, and more especially on Monk, the imputation of having abandoned public liberty, and brought on, by their inconsiderate loyalty or self-interested treachery, the misgovernment of the last two Stuarts, and the necessity of their ultimate expulsion. But, as this is a very material part of our history, and those who pronounce upon it have not always a very distinct notion either of what was or what could have been done, it may be worth while to consider the matter somewhat more analytically; confining myself, it is to be observed, in the present chapter, to what took place before the king's personal assumption of the government on the 29th of May, 1660. The subsequent proceedings of the convention parliament fall within another period.

We may remark, in the first place, that the unconditional restoration of Charles II. is sometimes spoken of in too hyperbolical language, as if he had come in as a sort of conqueror, with the laws and liberties of the people at his discretion. Yet he was restored to nothing but the bounded prerogatives of a king of England; bounded by every ancient and modern statute, including those of the long parliament, which had been enacted for the subjects' security. If it be true, as I have elsewhere observed, that the long parliament, in the year 1641, had established, in its most essential parts, our existing constitution, it can hardly be maintained that

[d] It is a curious proof of the state of public sentiment that, though Monk himself wrote a letter to the electors of Bridgenorth, recommending Thurloe, the cavalier party was so powerful, that his friends did not even produce the letter lest it should be treated with neglect Thurloe, vii. 895.

fresh limitations and additional securities were absolutely indispensable, before the most fundamental of all its principles, the government by king, lords, and commons, could be permitted to take its regular course. Those who so vehemently reprobate the want of conditions at the Restoration would do well to point out what conditions should have been imposed, and what mischiefs they can probably trace from their omission.[e] They should be able also to prove that, in the circumstances of the time, it was quite as feasible and convenient to make certain secure and obligatory provisions the terms of the king's restoration as seems to be taken for granted.

Plan of reviving the treaty of Newport inexpedient.

The chief presbyterians appear to have considered the treaty of Newport, if not as fit to be renewed in every article, yet at least as the basis of the compact into which they were to enter with Charles II.[f] But were the concessions wrested in this treaty from his father, in the hour of peril and necessity, fit to become the permanent rules of the English constitution? Turn to the articles prescribed by the long parliament in that negotiation. Not to mention the establishment of a rigorous presbytery in the church, they had insisted on the exclusive command of all forces by land and sea for twenty years, with the sole power of levying and expending the moneys necessary for their support; on the nomination of the principal officers of state and of the judges during the same period; and on the exclusion of the king's adherents from all trust or political power. Admit even that the insincerity and arbitrary principles of Charles I. had rendered necessary such extraordinary precautions, was it to be supposed that the executive power should not revert to his successor? Better it were, beyond comparison, to maintain the perpetual exclusion of his family than to mock them with such a titular crown, the certain

[e] "To the king's coming in without conditions may be well imputed all the errors of his reign." Thus says Burnet. The great political error, if so it should be termed, of his reign, was a conspiracy with the king of France and some wicked advisers at home to subvert the religion and liberty of his subjects; and it is difficult to perceive by what conditions this secret intrigue could have been prevented.

[f] Clarendon Papers, p. 729. They resolved to send the articles of that treaty to the king, leaving out the preface. This was about the middle of April.

cause of discontent and intrigue, and to mingle premature distrust with their professions of affection. There was undoubtedly much to apprehend from the king's restoration; but it might be expected that a steady regard for public liberty in the parliament and the nation would obviate that danger without any momentous change of the constitution; or that, if such a sentiment should prove unhappily too weak, no guarantees of treaties or statutes would afford a genuine security.

Difficulty of framing conditions.

If, however, we were to be convinced that the restoration was effected without a sufficient safeguard against the future abuses of royal power, we must still allow, on looking attentively at the circumstances, that there were very great difficulties in the way of any stipulations for that purpose. It must be evident that any formal treaty between Charles and the English government, as it stood in April, 1660, was inconsistent with their common principle. That government was, by its own declarations, only de facto, only temporary; the return of the secluded members to their seats, and the votes they subsequently passed, held forth to the people that everything done since the force put on the house in December, 1648, was by an usurpation; the restoration of the ancient monarchy was implied in all recent measures, and was considered as out of all doubt by the whole kingdom. But between a king of England and his subjects no treaty, as such, could be binding; there was no possibility of entering into stipulations with Charles, though in exile, to which a court of justice would pay the slightest attention, except by means of acts of parliament. It was doubtless possible that the council of state might have entered into a secret agreement with him on certain terms, to be incorporated afterwards into bills, as at the treaty of Newport. But at that treaty his father, though in prison, was the acknowledged sovereign of England; and it is manifest that the king's recognition must precede the enactment of any law. It is equally obvious that the contracting parties would no longer be the same, and that the conditions that seemed indispensable to the council of state might not meet with the approbation of parliament. It might occur to an impatient people that the former were not invested with such legal or permanent autho-

rity as could give them any pretext for bargaining with the king, even in behalf of public liberty.

But, if the council of state, or even the parliament on its first meeting, had resolved to tender any hard propositions to the king, as the terms, if not of his recognition, yet of his being permitted to exercise the royal functions, was there not a possibility that he might demur about their acceptance, that a negotiation might ensue to procure some abatement, that, in the interchange of couriers between London and Brussels, some weeks at least might be whiled away? Clarendon, we are sure, inflexible and uncompromising as to his master's honour, would have dissuaded such enormous sacrifices as had been exacted from the late king. And during this delay, while no legal authority would have subsisted, so that no officer could have collected the taxes or executed process without liability to punishment, in what a precarious state would the parliament have stood! On the one hand, the nation, almost maddened with the intoxication of reviving loyalty, and rather prone to cast at the king's feet the privileges and liberties it possessed than to demand fresh security for them, might insist upon his immediate return, and impair the authority of parliament. On the other hand, the army, desperately irreconcilable to the name of Stuart, and sullenly resenting the hypocrisy that had deluded them, though they knew no longer where to seek a leader, were accessible to the furious commonwealth's men, who, rushing as it were with lighted torches along their ranks, endeavoured to rekindle a fanaticism that had not quite consumed its fuel.[g] The escape of Lambert from the Tower had struck a panic into all the kingdom; some such accident might again furnish a rallying point for the disaffected, and plunge the country into an unfathomable abyss of confusion. Hence the motion of sir Matthew Hale, in the convention parliament, to appoint a committee who should draw up propositions to be sent over for the king's acceptance, does not appear to me well timed and expedient; nor can I censure Monk for having objected to it.[h] The business in hand required

[g] Life of Clarendon, p. 10.

[h] "This," says Burnet, somewhat invidiously, "was the great service that Monk did; for as to the restoration itself, the tide ran so strong, that he only went into it dexterously enough to get much praise and great rewards." P. 12.

greater despatch. If the king's restoration was an essential blessing, it was not to be thrown away in the debates of a committee. A wary, scrupulous, conscientious English lawyer, like Hale, is always wanting in the rapidity and decision necessary for revolutions, though he may be highly useful in preventing them from going too far.

Conduct of the convention about this not blameable.

It is, I confess, more probable that the king would have accepted almost any conditions tendered to him; such at least would have been the advice of most of his counsellors; and his own conduct in Scotland was sufficient to show how little any sense of honour or dignity would have stood in his way. But on what grounds did his English friends, nay, some of the presbyterians themselves, advise his submission to the dictates of that party? It was in the expectation that the next free parliament, summoned by his own writ, would undo all this work of stipulation, and restore him to an unfettered prerogative. And this expectation there was every ground, from the temper of the nation, to entertain. Unless the convention parliament had bargained for its own perpetuity, or the privy council had been made immovable, or a military force independent of the crown had been kept up to overawe the people (all of them most unconstitutional and abominable usurpations), there was no possibility of maintaining the conditions, whatever they might have been, from the want of which so much mischief is fancied to have sprung. Evils did take place, dangers did arise, the liberties of England were once more impaired; but these are far less to be ascribed to the actors in the restoration than to the next parliament, and to the nation who chose it.

I must once more request the reader to take notice that I am not here concerned with the proceedings of the convention parliament after the king's return to England, which in some respects appear to me censurable; but discussing the question, whether they were guilty of any fault in not tendering bills of limitation on the prerogative, as preliminary conditions of his restoration to the exercise of his lawful authority. And it will be found, upon a review of what took place in that interregnum from their meeting together on the 25th of April, 1660, to Charles's arrival in London on the 29th

of May, that they were less unmindful than has been sometimes supposed of provisions to secure the kingdom against the perils which had seemed to threaten it in the restoration.

On the 25th of April the commons met and elected Grimston, a moderate presbyterian, as their speaker, somewhat against the secret wish of the cavaliers, who, elated by their success in the elections, were beginning to aim at superiority, and to show a jealousy of their late allies.[j] On the same day the doors of the house of lords were found open; and ten peers, all of whom had sat in 1648, took their places as if nothing more than a common adjournment had passed in the interval.[k] There was, however, a very delicate and embarrassing question that had been much discussed in their private meetings. The object of these, as I have mentioned, was to impose terms on the king, and maintain the presbyterian ascendancy. But the peers of this party were far from numerous, and must be outvoted, if all the other lawful members of the house should be admitted to their privileges. Of these there were three classes. The first was of the peers who had come to their titles since the conclusion of the civil war, and whom there was no colour of justice, nor any vote of the house, to exclude. To some of these accordingly they caused letters to be directed, and the others took their seats without objection on the 26th and 27th of April, on the latter of which days thirty-eight peers were present.[m] The second class was of those who had joined Charles I., and had been excluded from sitting in the house by votes of the long parliament. These it had been in contemplation among the presbyterian junto to keep out; but the glaring inconsistency of such a measure with the popular sentiment, and the strength that the first class had given to the royalist interest among the aristocracy, prevented them from insisting on it. A third class consisted of those who had been created since the great seal was taken to York in 1642; some by the

j Grimston was proposed by Pierpoint, and conducted to the chair by him, Monk, and Hollis. Journals, Parl. Hist. The cavaliers complained that this was done before they came into the house, and that he was partial. Mordaunt to Hyde, April 27. Clarendon State Papers, 734.

k These were the earls of Manchester, Northumberland, Lincoln, Denbigh, and Suffolk; lords Say, Wharton, Hunsdon, Grey, Maynard. Lords' Journals, April 25.

m Clar. State Pap., 734. Lords' Jour

late king, others by the present in exile; and these, according to the fundamental principle of the parliamentary side, were incapable of sitting in the house. It was probably one of the conditions on which some meant to insist, conformably to the articles of the treaty of Newport, that the new peers should be perpetually incapable: or even that none should in future have the right of voting without the concurrence of both houses of parliament. An order was made therefore on May 4, that no lords created since 1642 should sit.[n] This was vacated by a subsequent resolution of May 31.

A message was sent down to the commons on April 27, desiring a conference on the great affairs of the kingdom This was the first time that word had been used for more than eleven years. But the commons, in returning an answer to this message, still employed the word nation. It was determined that the conference should take place on the ensuing Tuesday, the first of May." In this conference there can be no doubt that the question of further securities against the power of the crown would have been discussed. But Monk, whether from conviction of their inexpedience or to atone for his ambiguous delay, had determined to prevent any encroachment on the prerogative. He caused the king's letter to the council of state and to the two houses of parliament to be delivered on that very day. A burst of enthusiastic joy testified their long-repressed wishes: and, when the conference took place the earl of Manchester was instructed to let the commons know that the lords "do own and declare

[n] "It was this day (April 27) moved in the house of commons to call in the king; but it was deferred till Tuesday next by the king's friends' consent, and then it is generally believed something will be done in it. The calling in of the king is now not doubted; but there is a party among the old secluded members that would have the treaty grounded upon the Isle of Wight propositions; and the old lords are thought generally of that design. But it is believed the house of commons will use the king more gently. The general hath been highly complimented by both houses, and, without doubt, the giving the king easy or hard conditions dependeth totally upon him; for, if he appear for the king, the affections of the people are so high for him, that no other authority can oppose him." H. Coventry to Marquis of Ormond." Carte's Letters, ii. 328. Mordaunt confirms this. Those who moved for the king were colonel King and Mr. Finch, both decided cavaliers. It must have been postponed by the policy of Monk. What could Clarendon mean by saying (History of Rebellion, vii. 478) that "none had the courage, how loyal soever their wishes were, to mention his majesty"? This strange way of speaking has misled Hume, who copies it. The king was as generally talked of as if he were on the throne.

that, according to the ancient and fundamental laws of this kingdom, the government is and ought to be by king, lords, and commons." On the same day the commons resolved to agree in this vote, and appointed a committee to report what pretended acts and ordinances were inconsistent with it.[o]

It is, however, so far from being true that this convention gave itself up to a blind confidence in the king, that their journals during the month of May bear witness to a considerable activity in furthering provisions which the circumstances appeared to require. They appointed a committee on May 3rd to consider of the king's letter and declaration, both holding forth, it will be remembered, all promises of indemnity, and everything that could tranquillize apprehension, and to propose bills accordingly, especially for taking away military tenures. One bill was brought into the house to secure lands purchased from the trustees of the late parliament; another, to establish ministers already settled in benefices; a third, for a general indemnity; a fourth, to take away tenures in chivalry and wardship; a fifth, to make void all grants of honour or estate made by the late or present king since May, 1642. Finally, on the very 29th of May, we find a bill read twice and committed, for the confirmation of privilege of parliament, Magna Charta, the Petition of Right, and other great constitutional statutes.[p] These measures, though some of them were never completed, proved that the restoration was not carried forward with so thoughtless a precipitancy and neglect of liberty as has been asserted.

except in respect of the militia.

There was undoubtedly one very important matter of past controversy which they may seem to have avoided, the power over the militia. They silently gave up that momentous question. Yet it was become, in a practical sense, incomparably more important that the representatives of the commons should retain a control over the land forces of the nation than it had been at the commencement of the controversy. War and usurpation had sown the dragon's teeth in our fields; and, instead of the peaceable trained bands of former ages, the citizen soldiers who could not be marched

[o] Lords' and Commons' Journals. Parl. Hist. iv. 24.
[p] Commons' Journals.

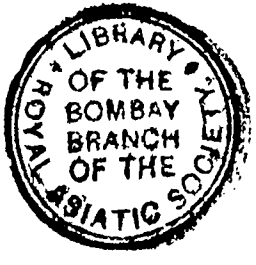
beyond their counties, we had a veteran army accustomed to tread upon the civil authority at the bidding of their superiors, and used alike to govern and obey. It seemed prodigiously dangerous to give up this weapon into the hands of our new sovereign. The experience of other countries as well as our own demonstrated that the public liberty could never be secure if a large standing army should be kept on foot, or any standing army without consent of parliament. But this salutary restriction the convention parliament did not think fit to propose; and in this respect I certainly consider them as having stopped short of adequate security. It is probable that the necessity of humouring Monk, whom it was their first vote to constitute general of all the forces in the three kingdoms,[q] with the hope, which proved not vain, that the king himself would disband the present army, whereon he could so little rely, prevented any endeavour to establish the control of parliament over the military power till it was too late to withstand the violence of the cavaliers, who considered the absolute prerogative of the crown in that point the most fundamental article of their creed.

Conduct of Monk.

Of Monk himself it may, I think, be said that, if his conduct in this revolution was not that of a high-minded patriot, it did not deserve all the reproach that has been so frequently thrown on it. No one can, without forfeiting all pretensions to have his own word believed, excuse his incomparable deceit and perjury; a masterpiece, no doubt, as it ought to be reckoned by those who set at nought the obligations of veracity in public transactions, of that wisdom which is not from above. But, in seconding the public wish for the king's restoration, a step which few perhaps can be so much in love with fanatical and tyrannous usurpation as to condemn, he seems to have used what influence he possessed —an influence by no means commanding—to render the new settlement as little injurious as possible to public and private interests. If he frustrated the scheme of

[q] Lords' Journals, May 2. Upon the same day the house went into consideration how to settle the militia of this kingdom. A committee of twelve lords was appointed for this purpose, and the commons were requested to appoint a proportionate number to join therein. But no bill was brought in till after the king's return.

throwing the executive authority into the hands of a presbyterian oligarchy, I, for one, can see no great cause for censure; nor is it quite reasonable to expect that a soldier of fortune, inured to the exercise of arbitrary power, and exempt from the prevailing religious fanaticism which must be felt or despised, should have partaken a fervent zeal for liberty, as little congenial to his temperament as it was to his profession. He certainly did not satisfy the king, even in his first promises of support, when he advised an absolute indemnity, and the preservation of actual interests in the lands of the crown and church. In the first debates on the bill of indemnity, when the case of the regicides came into discussion, he pressed for the smallest number of exceptions from pardon; and, though his conduct after the king's return displayed his accustomed prudence, it is evident that, if he had retained great influence in the council, which he assuredly did not, he would have maintained as much as possible of the existing settlement in the church. The deepest stain on his memory is the production of Argyle's private letters on his trial in Scotland; nor indeed can Monk be regarded, upon the whole, as an estimable man, though his prudence and success may entitle him, in the common acceptation of the word, to be reckoned a great one.



CHAPTER XI.

FROM THE RESTORATION OF CHARLES THE SECOND TO THE FALL OF THE CABAL ADMINISTRATION.

Popular Joy at the Restoration — Proceedings of the Convention Parliament — Act of Indemnity — Exclusion of the Regicides and others — Discussions between the Houses on it — Execution of Regicides — Restitution of Crown and Church Lands — Discontent of the Royalists — Settlement of the Revenue — Abolition of Military Tenures — Excise granted instead — Army disbanded — Clergy restored to their Benefices — Hopes of the Presbyterians from the King — Projects for a Compromise — King's Declaration in Favour of it—Convention Parliament dissolved—Different Complexion of the next — Condemnation of Vane — Its Injustice—Acts replacing the Crown in its Prerogatives — Corporation Act — Repeal of Triennial Act — Star-chamber not restored — Presbyterians deceived by the King — Savoy Conference — Act of Uniformity — Ejection of Nonconformist Clergy — Hopes of the Catholics — Bias of the King towards them — Resisted by Clarendon and the Parliament — Declaration for Indulgence — Objected to by the Commons — Act against Conventicles — Another of the same kind—Remarks on them — Dissatisfaction increases — Private Life of the King — Opposition in Parliament — Appropriation of Supplies — Commission of Public Accounts — Decline of Clarendon's Power — Loss of the King's Favour — Coalition against him — His Impeachment — Some Articles of it not unfounded — Illegal Imprisonments — Sale of Dunkirk — Solicitation of French Money — His Faults as a Minister — His pusillanimous Flight — And consequent Banishment — Cabal Ministry — Scheme of Comprehension and Indulgence — Triple Alliance — Intrigue with France — King's Desire to be Absolute — Secret Treaty of 1670 — Its Objects — Differences between Charles and Louis as to the Mode of its Execution — Fresh Severities against Dissenters — Dutch War — Declaration of Indulgence — Opposed by Parliament — And withdrawn — Test Act — Fall of Shaftesbury and his Colleagues.

Popular Joy at the restoration.

It is universally acknowledged that no measure was ever more national, or has ever produced more testimonies of public approbation, than the restoration of Charles II. Nor can this be attributed to the usual fickleness of the multitude. For the late government, whether under the parliament or the protector, had never obtained the sanction of popular consent, nor could have subsisted for a day without the support of the army. The king's return seemed to the people the harbinger of a real liberty, instead of that

bastard commonwealth which had insulted them with its name—a liberty secure from enormous assessments, which, even when lawfully imposed, the English had always paid with reluctance; and from the insolent despotism of the soldiery. The young and lively looked forward to a release from the rigours of fanaticism, and were too ready to exchange that hypocritical austerity of the late times for a licentiousness and impiety that became characteristic of the present. In this tumult of exulting hope and joy there was much to excite anxious forebodings in calmer men; and it was by no means safe to pronounce that a change so generally demanded, and in most respects so expedient, could be effected without very serious sacrifices of public and particular interests.

Proceedings of the convention parliament.

Four subjects of great importance, and some of them very difficult, occupied the convention parliament from the time of the king's return till their dissolution in the following December: a general indemnity and legal oblivion of all that had been done amiss in the late interruption of government; an adjustment of the claims for reparation which the crown, the church, and private royalists had to prefer; a provision for the king's revenue, consistent with the abolition of military tenures; and the settlement of the church. These were in effect the articles of a sort of treaty between the king and the nation, without some legislative provisions as to which, no stable or tranquil course of law could be expected.

Act of indemnity.

The king, in his well-known declaration from Breda, dated the 14th of April, had laid down, as it were, certain bases of his restoration, as to some points which he knew to excite much apprehension in England. One of these was a free and general pardon to all his subjects, saving only such as should be excepted by parliament. It had always been the king's expectation, or at least that of his chancellor, that all who had been immediately concerned in his father's death should be delivered up to punishment;[a] and, in the most unpropitious state of his fortunes, while making all professions of pardon and favour to different parties, he had constantly excepted

Exclusion of the regicides and others.

[a] Life of Clarendon, p. 69.

the regicides.[b] Monk, however, had advised, in his first messages to the king, that none, or at most not above four, should be excepted on this account;[c] and the commons voted that not more than seven persons should lose the benefit of the indemnity both as to life and estate.[d] Yet, after having named seven of the late king's judges, they proceeded in a few days to add several more, who had been concerned in 'managing' his trial, or otherwise forward in promoting his death.[e] They went on to pitch upon twenty persons, whom, on account of their deep concern in the transactions of the last twelve years, they determined to affect with penalties not extending to death, and to be determined by some future act of parliament.[f] As their passions grew warmer, and the wishes of the court became better known, they came to except from all benefit of the indemnity such of the king's judges as had not renderec themselves to justice according to the late proclamation. In this state the bill of indemnity and oblivion was sent

[b] Clar. State Papers, iii. 427, 529. In fact, very few of them were likely to be of use; and the exception made his general offers appear more sincere.

[c] Clar. Hist. of Rebellion, vii. 447. Ludlow says that Fairfax and Northumberland were positively against the punishment of the regicides; vol. iii. p. 10; and that Monk vehemently declared at first against any exceptions, and afterwards prevailed on the house to limit them to seven: p. 16. Though Ludlow was not in England, this seems very probable, and is confirmed by other authority as to Monk. Fairfax, who had sat one day himself on the king's trial, could hardly with decency concur in the punishment of those who went on.

[d] Journals, May 14.

[e] June 5, 6, 7. The first seven were Scott, Holland, Lisle, Barkstead, Harrison, Say, Jones. They went on to add Coke, Broughton, Dendy.

[f] These were Lenthall, Vane, Burton, Keble, St. John, Ireton, Haslerig, Sydenham, Desborough, Axtell, Lambert, Pack, Blackwell, Fleetwood, Pyne, Dean, Creed, Nye, Goodwin, and Cobbet: some of them rather insignificant names. Upon the words that "twenty and no more" be so excepted, two divisions took place, 160 to 131, and 153 to 135; the presbyterians being the majority: June 8. Two other divisions took place on the names of Lenthall, carried by 215 to 126, and of Whitelock, lost by 175 to 134. Another motion was made afterwards against Whitelock by Prynne. Milton was ordered to be prosecuted separately from the twenty; so that they already broke their resolution. He was put in custody of the serjeant-at-arms, and released, December 17. Andrew Marvell, his friend, soon afterwards complained that fees to the amount of 150 pounds had been extorted from him; but Finch answered that Milton had been Cromwell's secretary, and deserved hanging. Parl. Hist. p. 162. Lenthall had taken some share in the restoration, and entered into correspondence with the king's advisers a little before. Clar. State Papers, iii. 711, 720. Kennet's Register, 762. But the royalists never could forgive his having put the question to the vote on the ordinance for trying the late king.

[g] June 30. This was carried without a division. Eleven were afterwards excepted by name, as not having rendered themselves: July 9.

up to the lords.[h] But in that house the old royalists had a more decisive preponderance than among the commons. They voted to except all who had signed the death-warrant against Charles I., or sat when sentence was pronounced, and five others by name, Hacker, Vane, Lambert, Haslerig, and Axtell. They struck out, on the other hand, the clause reserving Lenthall and the rest of the same class for future penalties. They made other alterations in the bill to render it more severe;[i] and with these, after a pretty long delay, and a positive message from the king, requesting them to hasten their proceedings (an irregularity to which they took no exception, and which in the eyes of the nation was justified by the circumstances), they returned the bill to the commons.

The vindictive spirit displayed by the upper house was not agreeable to the better temper of the commons, where the presbyterian or moderate party retained great influence. Though the king's judges (such at least as had signed the death-warrant) were equally guilty, it was consonant to the practice of all humane governments to make a selection for capital penalties; and to put forty or fifty persons to death for that offence seemed a very sanguinary course of proceeding, and not likely to promote the conciliation and oblivion so much cried up. But there was a yet stronger objection to this severity. The king had published a proclamation, in a few days after his landing, commanding his father's judges to render themselves up within fourteen days, on pain of being excepted from any pardon or indemnity, either as to their lives or estates. Many had voluntarily come in, having put an obvious construction on this proclamation. It seems to admit of little question that the king's faith was pledged to those persons, and that no advantage could be taken of any ambiguity in the proclamation, without as real perfidiousness as if

h July 11.

i The worst and most odious of their proceedings, quite unworthy of a Christian and civilised assembly, was to give the next relations of the four peers who had been executed under the commonwealth, Hamilton, Holland, Capel, and Derby, the privilege of naming each one person (among the regicides) to be executed. This was done in the three last instances; but lord Denbigh, as Hamilton's kinsman, nominated one who was dead; and, on this being pointed out to him, refused to fix on another. Journal, Aug 7. Ludlow, iii. 34

the words had been more express. They were at least entitled to be set at liberty, and to have a reasonable time allowed for making their escape, if it were determined to exclude them from the indemnity.[k] The commons were more mindful of the king's honour and their own than his nearest advisers.[m] But the violent royalists were gaining ground among them, and it ended in a compromise. They left Hacker and Axtell, who had been prominently concerned in the king's death, to their fate. They even admitted the exceptions of Vane and Lambert, contenting themselves with a joint address of both houses to the king, that, if they should be attainted, execution as to their lives might be remitted. Haslerig was saved on a division of 141 to 116, partly through the intercession of Monk, who had pledged his word to him. Most of the king's judges were entirely excepted; but with a proviso in favour of such as had surrendered according to the proclamation, that the sentence should not be executed without a special act of parliament.[n] Others were reserved for penalties not extending to life, to be inflicted by a future act. About twenty enumerated persons, as well as those who had pronounced sentence of death in any of the late illegal high courts of justice, were rendered incapable of any civil or military office. Thus, after three months' delay, which had given room to distrust the boasted clemency and forgiveness of the victorious royalists, the act of indemnity was finally passed.

Discussions between the houses on it.

[k] Lord Southampton, according to Ludlow, actually moved this in the house of lords, but was opposed by Finch: iii. 43.

[m] Clarendon uses some shameful chicanery about this (Life, p. 69); and with that inaccuracy, to say the least, so habitual to him, says, "the parliament had published a proclamation, that all who did not render themselves by a day named should be judged as guilty, and attainted of treason." The proclamation was published by the king, on the suggestion indeed of the lords and commons, and the expressions were what I have stated in the text. State Trials, v. 959. Somers Tracts, vii. 437. It is obvious that by this misrepresentation he not only throws the blame of ill faith off the king's shoulders, but puts the case of those who obeyed the proclamation on a very different footing. The king, he pretends, had always expected that none of the regicides should be spared. But why did he publish such a proclamation? Clarendon, however, seems to have been against the other exceptions from the bill of indemnity, as contrary to some expressions in the declaration from Breda, which had been inserted by Monk's advice; and thus wisely and honourably got rid of the twenty exceptions, which had been sent up from the commons, p. 133. The lower house resolved to agree with the lords as to those twenty persons, or rather sixteen of them, by 197 to 102, Hollis and Morrice telling the ayes.

[n] Stat. 12 Car. II. c. 11.

Execution of regicides.

Ten persons suffered death soon afterwards for the murder of Charles I.; and three more who had been seized in Holland, after a considerable lapse of time.[o] There can be no reasonable ground for censuring either the king or the parliament for their punishment, except that Hugh Peters, though a very odious fanatic, was not so directly implicated in the king's death as many who escaped, and the execution of Scrope, who had surrendered under the proclamation, was an inexcusable breach of faith.[p] But nothing can be more sophistical than to pretend that such men as Hollis and Annesley, who had been expelled from parliament by the violence of the same faction who put the king to death, were not to vote for their punishment, or to sit in judgment on them, because they had sided with the commons in the civil war.[q] It is mentioned by many writers, and in the Journals, that when Mr. Lenthall, son of the late speaker, in the very first days of

[o] These were, in the first instance, Harrison, Scott, Scrope, Jones, Clement, Carew, all of whom had signed the warrant, Cook, the solicitor at the high court of justice, Hacker and Axtell, who commanded the guard on that occasion, and Peters. Two years afterwards, Downing, ambassador in Holland, prevailed on the states to give up Barkstead, Corbet, and Okey. They all died with great constancy, and an enthusiastic persuasion of the righteousness of their cause. State Trials.

Pepys says in his Diary, 13th October, 1660, of Harrison, whose execution he witnessed, that "he looked as cheerful as any man could do in that condition."

[p] It is remarkable that Scrope had been so particularly favoured by the convention parliament, as to be exempted, together with Hutchinson and Lascelles, from any penalty or forfeiture by a special resolution: June 9. But the lords put in his name again, though they pointedly excepted Hutchinson; and the commons, after first resolving that he should only pay a fine of one year's value of his estate, came at last to agree in excepting him from the indemnity as to life. It appears that some private conversation of Scrope had been betrayed, wherein he spoke of the king's death as he thought.

As to Hutchinson, he had certainly concurred in the restoration, having an extreme dislike to the party who had turned out the parliament in Oct. 1659, especially Lambert. This may be inferred from his conduct, as well as by what Ludlow says, and Kennet in his Register, p. 169. His wife puts a speech into his mouth as to his share in the king's death, not absolutely justifying it, but, I suspect, stronger than he ventured to use. At least, the commons voted that he should not be excepted from the indemnity, "on account of his signal repentance," which could hardly be predicated of the language she ascribes to him. Compare Mrs. Hutchinson's Memoirs, p. 367, with Commons' Journals, June 9.

[q] Horace Walpole, in his Catalogue of Noble Authors, has thought fit to censure both these persons for their pretended inconsistency. The case is however different as to Monk and Cooper; and perhaps it may be thought that men of more delicate sentiments than either of these possessed would not have sat upon the trial of those with whom they had long professed to act in concert, though innocent of their crime.

the convention parliament, was led to say that those who had levied war against the king were as blameable as those who had cut off his head, he received a reprimand from the chair, which the folly and dangerous consequence of his position well deserved; for such language, though it seems to have been used by him in extenuation of the regicides, was quite in the tone of the violent royalists.[r]

A question apparently far more difficult was that of restitution and redress. The crown lands, those of the church, the estates in certain instances of eminent royalists, had been sold by the authority of the late usurpers, and that not at very low rates, considering the precariousness of the title. This naturally seemed a material obstacle to the restoration of ancient rights, especially in the case of ecclesiastical corporations, whom men are commonly less disposed to favour than private persons. The clergy themselves had never expected that their estates would revert to them in full propriety, and would probably have been contented, at the moment of the king's return, to grant easy leases to the purchasers. Nor were the house of commons, many of whom were interested in these sales, inclined to let in the former owners without conditions. A bill was accordingly brought into the house at the beginning of the session to confirm sales, or to give indemnity to the purchasers. I do not find its provisions more particularly stated. The zeal of the royalists soon caused the crown lands to be excepted.[s] But the house adhered to the principle of composition as to ecclesiastical property, and kept the bill a long time in debate. At the adjournment in September the chancellor told them his majesty had thought much upon the business, and done much for the accommodation of many particular persons, and doubted not but that, before they met again, a good progress would be made,

Restitution of crown and church lands.

[r] Commons' Journals, May 12, 1660. [Yet the balance of parties in the convention parliament was so equal, that on a resolution that receivers and collectors of public money should be accountable to the king for all moneys received by them since Jan. 30, 1648-9, an amendment to substitute the year 1642-3 was carried against the presbyterians by 165 to 150. It was not designed that those who had accounted to the parliament should actually refund what they had received, but to declare, indirectly, the illegality of the parliamentary authority Commons' Journals, June 2.—1845.]

[s] Parl. Hist. iv. 80.

so that the persons concerned would be much to blame if they received not full satisfaction, promising also to advise with some of the commons as to that settlement. These expressions indicate a design to take the matter out of the hands of parliament. For it was Hyde's firm resolution to replace the church in the whole of its property, without any other regard to the actual possessors than the right owners should severally think it equitable to display. And this, as may be supposed, proved very small. No further steps were taken on the meeting of parliament after the adjournment; and by the dissolution the parties were left to the common course of law. The church, the crown, the dispossessed royalists, re-entered triumphantly on their lands: there were no means of repelling the owners' claim, nor any satisfaction to be looked for by the purchasers under so defective a title. It must be owned that the facility with which this was accomplished is a striking testimony to the strength of the new government and the concurrence of the nation. This is the more remarkable, if it be true, as Ludlow informs us, that the chapter lands had been sold by the trustees appointed by parliament at the clear income of fifteen or seventeen years' purchase.[u]

Discontent of the royalists.

The great body, however, of the suffering cavaliers, who had compounded for their delinquency under the ordinances of the long parliament, or whose estates had been for a time in sequestration, found no remedy for these losses by any process of law. The act of indemnity put a stop to any suits they might have instituted against persons concerned in carrying these illegal ordinances into execution. They were compelled to put up with their poverty, having the additional mortification of seeing one class, namely, the clergy, who had been engaged in the same cause, not alike in their fortune, and many even of the vanquished republicans undisturbed in wealth which, directly or indirectly, they deemed acquired at their

[t] Parl. Hist. iv. 129.

[u] Memoirs, p. 229. It appears by some passages in the Clarendon Papers that the church had not expected to come off so brilliantly; and, while the restoration was yet unsettled, would have been content to give leases of their lands: p. 620, 723. Hyde, however, was convinced that the church would be either totally ruined, or restored to a great lustre; and herein he was right, as it turned out. P. 614.

own expense.* They called the statute an act of indemnity for the king's enemies, and of oblivion for his friends. They murmured at the ingratitude of Charles, as if he were bound to forfeit his honour and risk his throne for their sakes. They conceived a deep hatred of Clarendon, whose steady adherence to the great principles of the act of indemnity is the most honourable act of his public life. And the discontent engendered by their disappointed hopes led to some part of the opposition afterwards experienced by the king, and still more certainly to the coalition against the minister.

Settlement of the revenue.

No one cause had so eminently contributed to the dissensions between the crown and parliament, in the two last reigns, as the disproportion between the public revenues under a rapidly-increasing depreciation in the value of money, and the exigencies, at least on some occasions, of the administration. There could be no apology for the parsimonious reluctance of the commons to grant supplies, except the constitutional necessity of rendering them the condition of redress of grievances; and in the present circumstances, satisfied, as they seemed at least to be, with the securities they had obtained, and enamoured of their new sovereign, it was reasonable to make some further provision for the current expenditure. Yet this was to be meted out with such prudence as not to place him beyond the necessity of frequent recurrence to their aid. A committee was accordingly appointed "to consider of settling such a revenue on his majesty as may maintain the splendour and grandeur of his kingly office, and preserve the crown from want and from being undervalued by his neighbours." By their report it appeared that the revenue of Charles I. from 1637 to 1641 had

* Life of Clarendon, 99. L'Estrange, in a pamphlet printed before the end of 1660, complains that the cavaliers were neglected, the king betrayed, the creatures of Cromwell, Bradshaw, and St. John, laden with offices and honours. Of the indemnity he says, "That act made the enemies to the constitution masters in effect of the booty of three nations, bating the crown and church lands, all which they might now call their own; while those who stood up for the laws were abandoned to the comfort of an irreparable but honourable ruin." He reviles the presbyterian ministers still in possession, and tells the king that misplaced lenity was his father's ruin. Kennet's Register, p. 233. See, too, in Somers Tracts, vii. 517, 'The Humble Representation of the Sad Condition of the King's Party.' Also p. 557.

amounted on an average to about 900,000*l.*, of which full 200,000*l.* arose from sources either not warranted by law or no longer available.[y] The house resolved to raise the present king's income to 1,200,000*l.* per annum, a sum perhaps sufficient in those times for the ordinary charges of government. But the funds assigned to produce his revenue soon fell short of the parliament's calculation.[z]

Abolition of military tenures. Excise granted instead.

One ancient fountain that had poured its stream into the royal treasury it was now determined to close up for ever. The feudal tenures had brought with them at the Conquest, or not long after, those incidents, as they were usually called, or emoluments of signiory, which remained after the military character of fiefs had been nearly effaced, especially the right of detaining the estates of minors holding in chivalry without accounting for the profits. This galling burthen, incomparably more ruinous to the tenant than beneficial to the lord, it had long been determined to remove. Charles, at the treaty of Newport, had consented to give it up for a fixed revenue of 100,000*l.*; and this was almost the only part of that ineffectual compact which the present parliament were anxious to complete. The king, though likely to lose much patronage and influence, and what passed with lawyers for a high attribute of his prerogative, could not decently refuse a commutation so evidently advantageous to the aristocracy. No great difference of opinion subsisting as to the expediency of taking away military tenures, it remained only to decide from what resources the commutation revenue should spring. Two schemes were suggested; the one, a permanent tax on lands held in chivalry (which, as distinguished from those in soccage, were alone liable to the feudal burthens); the other, an excise on beer and some other liquors. It is evident that the former was founded on a just principle, while the latter transferred a particular burthen

[y] [Commons' Journals, Sept. 4, 1660; which I quote from 'Letter to the Rev. T. Carte' (in 1749), p. 44. This seems to have been exclusive of ship-money.—1845.]

[z] Commons' Journals, September 4, 1660. Sir Philip Warwick, chancellor of the exchequer, assured Pepys that the revenue fell short by a fourth of the 1,200,000*l.* voted by parliament. See his Diary, March 1, 1664. Ralph, however, says, the income in 1662 was 1,120,693*l.*, though the expenditure was 1,439,000*l.*: p. 88. It appears probable that the hereditary excise did not yet produce much beyond it's estimate. Id. p. 20.

to the community. But the self-interest which so unhappily predominates even in representative assemblies, with the aid of the courtiers, who knew that an excise increasing with the riches of the country was far more desirable for the crown than a fixed land-tax, caused the former to be carried, though by the very small majority of two voices.[a] Yet even thus, if the impoverishment of the gentry, and dilapidation of their estates through the detestable abuses of wardship, was, as cannot be doubted, very mischievous to the inferior classes, the whole community must be reckoned gainers by the arrangement, though it might have been conducted in a more equitable manner. The statute 12 Car. II. c. 24, takes away the court of wards, with all wardships and forfeitures for marriage by reason of tenure, all primer seisins and fines for alienation, aids, escuages, homages, and tenures by chivalry without exception, save the honorary services of grand sergeanty; converting all such tenures into common soccage. The same statute abolishes those famous rights of purveyance and preemption, the fruitful theme of so many complaining parliaments; and this relief of the people from a general burthen may serve in some measure as an apology for the imposition of the excise. This act may be said to have wrought an important change in the spirit of our constitution, by reducing what is emphatically called the prerogative of the crown, and which, by its practical exhibition in these two vexatious exercises of power, wardship and purveyance, kept up in the minds of the people a more distinct perception, as well as more awe, of the monarchy, than could be felt in later periods, when it has become, as it were, merged in the common course of law, and blended with the very complex mechanism of our institutions. This great innovation, however, is properly to be referred to the revolution of 1641, which put an end to the court of star-chamber, and suspended the feudal superiorities. Hence, with all the misconduct of the two last Stuarts, and all the tendency towards arbitrary power that their government often displayed, we must perceive that the constitution

[a] Nov. 21, 1660; 151 to 149. Parl. Hist. [It is to be observed, as some excuse for the commons, that the hereditary excise thus granted was one moiety of what already was paid by virtue of ordinances under the commonwealth.—1845.]

had put on, in a very great degree, its modern character during that period; the boundaries of prerogative were better understood; its pretensions, at least in public, were less enormous; and not so many violent and oppressive, certainly not so many illegal, acts were committed towards individuals as under the two first of their family.

In fixing upon 1,200,000*l.* as a competent revenue for the crown, the commons tacitly gave it to be understood that a regular military force was not among the necessities for which they meant to provide. They looked upon the army, notwithstanding its recent services, with that apprehension and jealousy which became an English house of commons. They were still supporting it by monthly assessments of 70,000*l.*, and could gain no relief by the king's restoration till that charge came to an end. A bill therefore was sent up to the lords before their adjournment in September, providing money for disbanding the land forces. This was done during the recess: the soldiers received their arrears with many fair words of praise, and the nation saw itself, with delight and thankfulness to the king, released from its heavy burthens and the dread of servitude.[b] Yet Charles had too much knowledge of foreign countries, where monarchy flourished in all its plenitude of sovereign power under the guardian sword of a standing army, to part readily with so favourite an instrument of kings. Some of his councillors, and especially the duke of York, dissuaded him from disbanding the army, or at least advised his supplying its place by another. The unsettled state of the kingdom after so momentous a revolution, the dangerous audacity of the fanatical party, whose enterprises were the more to be guarded against because they were founded on no such calculation as reasonable men would form, and of which the insurrection of Venner in November, 1660, furnished an example, did undoubtedly appear a very plausible excuse for something more of a military protection to the government than yeomen of the guard and gentlemen pensioners. General Monk's regiment, called the Coldstream, and one other of horse, were accordingly

Army disbanded.

[b] The troops disbanded were fourteen regiments of horse and eighteen of foot in England; one of horse and four of foot in Scotland, besides garrisons. Journals, Nov. 7.

retained by the king in his service; another was formed out of troops brought from Dunkirk; and thus began, under the name of guards, the present regular army of Great Britain.[c] In 1662 these amounted to about 5000 men; a petty force according to our present notions, or to the practice of other European monarchies in that age, yet sufficient to establish an alarming precedent, and to open a new source of contention between the supporters of power and those of freedom.

So little essential innovation had been effected by twenty years' interruption of the regular government in the common law or course of judicial proceedings, that, when the king and house of lords were restored to their places, little more seemed to be requisite than a change of names. But what was true of the state could not be applied to the church. The revolution there had gone much farther, and the questions of restoration and compromise were far more difficult.

Clergy restored to their benefices.

It will be remembered that such of the clergy as steadily adhered to the episcopal constitution had been expelled from their benefices by the long parliament under various pretexts, and chiefly for refusing to take the covenant. The new establishment was nominally presbyterian. But the presbyterian discipline and synodical government were very partially introduced; and, upon the whole, the church, during the suspension of the ancient laws, was rather an assemblage of congregations than a compact body, having little more unity than resulted from their common dependency on the temporal magistrate. In the time of Cromwell, who favoured the independent sectaries, some of that denomination obtained livings; but very few, I believe, comparatively, who had not received either episcopal or presbyterian ordination. The right of private patronage to benefices, and that of tithes, though continually menaced by the more violent party, subsisted without alteration. Meanwhile the episcopal ministers, though excluded from legal toleration along with papists, by the instrument of government under which Cromwell professed to hold his power, obtained, in general, a sufficient indulgence for the exer-

[c] Ralph, 35; Life of James, 447; Grose's Military Antiquities, i. 61.

cise of their function.[d] Once, indeed, on discovery of the royalist conspiracy in 1655, he published a severe ordinance, forbidding every ejected minister or fellow of a college to act as domestic chaplain or schoolmaster. But this was coupled with a promise to show as much tenderness as might consist with the safety of the nation towards such of the said persons as should give testimony of their good affection to the government; and, in point of fact, this ordinance was so far from being rigorously observed, that episcopalian conventicles were openly kept in London.[e] Cromwell was of a really tolerant disposition, and there had perhaps, on the whole, been no period of equal duration wherein the catholics themselves suffered so little molestation as under the protectorate.[f] It is well known that he permitted the settlement of Jews in England, after an exclusion of nearly three centuries, in spite of the denunciations of some bigoted churchmen and lawyers.

Hopes of the presbyterians from the king.

The presbyterian clergy, though co-operating in the king's restoration, experienced very just apprehensions of the church they had supplanted; and this was in fact one great motive of the restrictions that party was so anxious to impose on him. His character and sentiments were yet very imperfectly known in England; and much pains were taken on both sides, by short pamphlets, panegyrical or defamatory, to represent him as the best Englishman and best protestant of the age, or as one given up to profligacy and popery.[g] The caricature likeness was,

[d] Neal, 429, 444.

[e] Neal, 471. Pepys's Diary, ad init. Even in Oxford, about 300 episcopalians used to meet every Sunday with the connivance of Dr. Owen, dean of Christ Church. Orme's Life of Owen, 188. It is somewhat bold in Anglican writers to complain, as they now and then do, of the persecution they suffered at this period, when we consider what had been the conduct of the bishops before, and what it was afterwards. I do not know that any member of the church of England was imprisoned under the commonwealth, except for some political reason; certain it is that the gaols were not filled with them.

[f] The penal laws were comparatively dormant, though two priests suffered death, one of them before the protectorate. Butler's Mem. of Catholics, ii. 13. But in 1655 Cromwell issued a proclamation for the execution of these statutes; which seems to have been provoked by the persecution of the Vaudois. Whitelock tells us he opposed it, 625. It was not acted upon.

[g] Several of these appear in Somers' Tracts, vol. vii. The king's nearest friends were of course not backward in praising him, though a little at the expense of their consciences. "In a word," says Hyde to a correspondent in 1659, "if being the best protestant and the best

we must now acknowledge, more true than the other; but at that time it was fair and natural to dwell on the more pleasing picture. The presbyterians remembered that he was what they called a covenanted king; that is, that, for the sake of the assistance of the Scots, he had submitted to all the obligations, and taken all the oaths, they thought fit to impose.[h] But it was well known that, on the failure of those prospects, he had returned to the church of England, and that he was surrounded by its zealous adherents. Charles, in his declaration from Breda, promised to grant liberty of conscience, so that no man should be disquieted or called in question for differences of opinion in matters of religion which do not disturb the peace of the kingdom, and to consent to such acts of parliament as should be offered to him for confirming that indulgence. But he was silent as to the church establishment; and the presbyterian ministers, who went over to present the congratulations of their body, met with civil language, but no sort of encouragement to expect any personal compliance on the king's part with their mode of worship.[i]

The moderate party in the convention parliament, though not absolutely of the presbyterian interest, saw the danger of permitting an oppressed body of churchmen to regain their

Projects for a compromise

Englishman of the nation can do the king good at home, he must prosper with and by his own subjects." Clar. State Papers, 641. Morley says he had been to see Judge Hale, who asked him questions about the king's character and firmness in the protestant religion. Id. 736. Morley's exertions to dispossess men of the notion that the king and his brother were inclined to popery are also mentioned by Kennet in his Register, 818; a book containing very copious information as to this particular period. Yet Morley could hardly have been without strong suspicions as to both of them.

h He had written in cipher to secretary Nicholas, from St. Johnston's, Sept. 3, 1650, the day of the battle of Dunbar, "Nothing could have confirmed me more to the church of England than being here, seeing their hypocrisy." Supplement to Evelyn's Diary 133. The whole letter shows that he was on the point of giving his new friends the slip; as indeed he attempted soon after, in what was called the Start. Laing, iii. 463.

i [Several letters of Sharp, then in London, are published in Wodrow's 'History of the Church of Scotland,' which I quote from Kennet's Register. "I see clearly," he writes on June 10, "the general will not stand by the presbyterians; they talk of closing with moderate episcopacy for fear of worse." And on June 23, "All is wrong here as to church affairs. Episcopacy will be settled here to the height; their lands will be all restored. None of the presbyterian way here oppose this, but mourn in secret." "The generality of the people are doting after prelacy and the service-book." He found to his cost that it was much otherwise in Scotland.—1845.]

superiority without some restraint. The actual incumbents of benefices were on the whole a respectable and even exemplary class, most of whom could not be reckoned answerable for the legal defects of their title. But the ejected ministers of the Anglican church, who had endured for their attachment to its discipline and to the crown so many years of poverty and privation, stood in a still more favourable light, and had an evident claim to restoration. The commons accordingly, before the king's return, prepared a bill for confirming and restoring ministers, with the two-fold object of replacing in their benefices, but without their legal right to the intermediate profits, the episcopal clergy who by ejection or forced surrender had made way for intruders, and at the same time of establishing the possession, though originally usurped, of those against whom there was no claimant living to dispute it, as well as of those who had been presented on legal vacancies.[k] This act did not pass without opposition from the cavaliers, who panted to retaliate the persecution that had afflicted their church.[m]

This legal security, however, for the enjoyment of their livings gave no satisfaction to the scruples of conscientious men. The episcopal discipline, the Anglican liturgy and ceremonies, having never been abrogated by law, revived of course with the constitutional monarchy; and brought with them all the penalties that the act of uniformity and other statutes had inflicted. The non-

[k] 12 Car. II. c. 17. It is quite clear that an usurped possession was confirmed by this act, where the lawful incumbent was dead [though Burnet intimates that, this statute not having been confirmed by the next parliament, those who had originally come in by an unlawful title, were expelled by course of law. This I am inclined to doubt, as such a proceeding would have assumed the invalidity of the laws enacted in the convention parliament. But we find by a case reported in 1 Ventris, that the judges would not suffer these acts to be disputed.—1845.]

[m] Parl. Hist. 94. The chancellor, in his speech to the houses at their adjournment in September, gave them to understand that this bill was not quite satisfactory to the court, who preferred the confirmation of ministers by particular letters patent under the great seal; that the king's prerogative of dispensing with acts of parliament might not grow into disuse. Many got the additional security of such patents; which proved of service to them, when the next parliament did not think fit to confirm this important statute. Baxter says, p. 241, some got letters patent to turn out the possessors, where the former incumbents were dead. These must have been to benefices in the gift of the crown; in other cases letters patent could have been of no effect. I have found this confirmed by the Journals, Aug. 27, 1660. [But compare the preceding note, which leaves some doubt on the facts of the case.]

conforming clergy threw themselves on the king's compassion, or gratitude, or policy, for relief. The independents, too irreconcilable to the established church for any scheme of comprehension, looked only to that liberty of conscience which the king's declaration from Breda had held forth.[n] But the presbyterians soothed themselves with hopes of retaining their benefices by some compromise with their adversaries. They had never, generally speaking, embraced the rigid principles of the Scottish clergy, and were willing to admit what they called a moderate episcopacy. They offered, accordingly, on the king's request to know their terms, a middle scheme, usually denominated Bishop Usher's Model; not as altogether approving it, but because they could not hope for anything nearer to their own views. This consisted, first, in the appointment of a suffragan bishop for each rural deanery, holding a monthly synod of the presbyters within his district; and, secondly, in an annual diocesan synod of suffragans and representatives of the presbyters, under the presidency of the bishop, and deciding upon all matters before them by plurality of suffrages.[o] This is, I believe, considered by most competent judges as approaching more nearly than our own system to the usage of the primitive church, which gave considerable influence and superiority of rank to the bishop, without destroying the aristocratical character and co-ordinate jurisdiction of the ecclesiastical senate.[p] It lessened also the incon-

[n] Upon Venner's insurrection, though the sectaries, and especially the independents, published a declaration of their abhorrence of it, a pretext was found for issuing a proclamation to shut up the conventicles of the anabaptists and quakers, and so worded as to reach all others. Kennet's Register, 357.

[o] Collier, 869, 871; Baxter, 232, 238. The bishops said, in their answer to the presbyterians' proposals, that the objections against a single person's administration in the church were equally applicable to the state. Collier, 872. But this was false, as they well knew, and designed only to produce an effect at court; for the objections were not grounded on reasoning, but on a presumed positive institution. Besides which, the argument cut against themselves: for, if the English constitution, or something analogous to it, had been established in the church, their adversaries would have had all they *now* asked.

[p] Stillingfleet's Irenicum. King's Inquiry into the Constitution of the Primitive Church. The former work was published at this time, with a view to moderate the pretensions of the Anglican party, to which the author belonged, by showing: 1. That there are no sufficient data for determining with certainty the form of church government in the apostolical age, or that which immediately followed it; 2. That, as far as we may probably conjecture, the primitive church was framed on the model of the synagogue; that is, a synod of priests in every congregation,

veniences supposed to result from the great extent of some English dioceses. But, though such a system was inconsistent with that parity which the rigid presbyterians maintained to be indispensable, and those who espoused it are reckoned, in a theological division, among episcopalians, it was in the eyes of equally rigid churchmen little better than a disguised presbytery, and a real subversion of the Anglican hierarchy.[q]

The presbyterian ministers, or rather a few eminent persons of that class, proceeded to solicit a revision of the liturgy, and a consideration of the numerous objections which they made to certain passages, while they admitted the lawfulness of a prescribed form. They implored the king also to abolish, or at least not to enjoin as necessary, some of those ceremonies which they scrupled to use, and which in fact had been the original cause of their schism; the surplice, the cross in baptism, the practice of kneeling at the communion, and one or two more. A tone of humble supplication pervades all their language, which some might invidiously contrast with their unbending haughtiness in prosperity. The bishops and other Anglican divines, to whom their propositions were referred, met the offer of capitulation with a scornful and vindictive smile. They held out not the least overture towards a compromise.

having one of their own number for a chief or president; 3. That there is no reason to consider any part of the apostolical discipline as an invariable model for future ages, and that much of our own ecclesiastical polity cannot any way pretend to primitive authority; 4. That this has been the opinion of all the most eminent theologians at home and abroad; 5. That it would be expedient to introduce various modifications, not on the whole much different from the scheme of Usher. Stillingfleet, whose work is a remarkable instance of extensive learning and mature judgment at the age of about twenty-three, thought fit afterwards to retract it in a certain degree; and towards the latter part of his life gave into more high-church politics. It is true that the Irenicum must have been composed with almost unparalleled rapidity for such a work; but it shows, as far as I can judge, no marks of precipitancy. The biographical writers put its publication in 1659; but this must be a mistake; it could not have passed the press on the 24th of March, 1660, the latest day which could, according to the old style, have admitted the date of 1659, as it contains allusions to the king's restoration.

[q] Baxter's Life. Neal. [The episcopalians, according to Baxter, were of two kinds, "the old common moderate sort," who took episcopacy to be good, but not necessary, and owned the other reformed to be true churches; and those who followed Dr. Hammond, and were very few: their notion was that presbyters in Scripture meant bishops exclusively, and they set aside the reformed churches. But those few, "by their parts and interest in the nobility and gentry, did carry it at last against the other party." Baxter's Life, part 2, p. 149.—1845.]

The king, however, deemed it expedient, during the continuance of a parliament the majority of whom were desirous of union in the church, and had given some indications of their disposition,[r] to keep up the delusion a little longer and prevent the possible consequences of despair. He had already appointed several presbyterian ministers his chaplains, and given them frequent audiences. But during the recess of parliament he published a declaration, wherein, after some compliments to the ministers of the presbyterian opinion, and an artful expression of satisfaction that he had found them no enemies to episcopacy or a liturgy, as they had been reported to be, he announces his intention to appoint a sufficient number of suffragan bishops in the larger dioceses; he promises that no bishop should ordain or exercise any part of his spiritual jurisdiction without advice and assistance of his presbyters; that no chancellors or officials of the bishops should use any jurisdiction over the ministry, nor any archdeacon without the advice of a council of his clergy; that the dean and chapter of the diocese, together with an equal number of presbyters, annually chosen by the clergy, should be always advising and assisting at all ordinations, church censures, and other important acts of spiritual jurisdiction. He declared also that he would appoint an equal number of divines of both persuasions to revise the liturgy; desiring that in the mean time none would wholly lay it aside, yet promising that no one should be molested for not using it till it should be reviewed and reformed. With regard to ceremonies, he declared that none should be compelled to receive the sacrament kneeling, nor to use the cross in baptism, nor to bow at the name of Jesus, nor to wear the surplice except in the royal chapel and in cathedrals, nor should subscription to articles not doctrinal be required. He renewed also his declaration from Breda, that no man should be called in question for differences of religious opinion not disturbing the peace of the kingdom.[s]

King's declaration in favour of it.

[r] They addressed the king to call such divines as he should think fit, to advise with concerning matters of religion. July 20, 1660. Journals and Parl. Hist.

[s] Parl. Hist. Neal, Baxter, Collier, &c. Burnet says that Clarendon had made the king publish this declaration; "but the bishops did not approve of this;

Though many of the presbyterian party deemed this modification of Anglican episcopacy a departure from their notions of an apostolic church, and inconsistent with their covenant, the majority would doubtless have acquiesced in so extensive a concession from the ruling power. If faithfully executed according to its apparent meaning, it does not seem that the declaration falls very short of their own proposal, the scheme of Usher.[t] The high churchmen, indeed, would have murmured had it been made effectual. But such as were nearest the king's councils well knew that nothing else was intended by it than to scatter dust in men's eyes, and to prevent the interference of parliament. This was soon rendered manifest, when a bill to render the king's declaration effectual was vigorously opposed by the courtiers, and rejected on a second reading by 183 to 157.[u] Nothing could more forcibly demonstrate an intention of breaking faith with the presbyterians than this vote. For the king's declaration was repugnant to the act of uniformity and many other statutes, so that it could not be carried into effect without the authority of parliament, unless by means of such a general dispensing power as no parliament would endure.[x] And it is impossible to question

and, after the service they did that lord in the duke of York's marriage, he would not put any hardship on those who had so signally obliged him." This is very invidious. I know no evidence that the declaration was published at Clarendon's suggestion, except indeed that he was the great adviser of the crown; yet in some things, especially of this nature, the king seems to have acted without his concurrence. He certainly speaks of the declaration as if he did not wholly relish it (Life, 75), and does not state it fairly. In State Trials, vi. 11, it is said to have been drawn up by Morley and Henchman for the church, Reynolds and Calamy for the dissenters; if they disagreed, lords Anglesea and Hollis to decide.

[t] The chief objection made by the presbyterians, as far as we learn from Baxter, was, that the consent of presbyters to the bishops' acts was not promised by the declaration, but only their advice; a distinction apparently not very material in practice, where the advice was apparently made obligatory, but bearing perhaps on the great point of controversy, whether the difference between the two were in order or in degree. The king would not come into the scheme of consent; though they pressed him with a passage out of the Icon Basilikè, where his father allowed of it. Life of Baxter, 276. Some alterations, however, were made in consequence of their suggestions.

[u] Parl. Hist. 141, 152. Clarendon, 76, most strangely observes on this, "Some of the leaders brought a bill into the house for the making that declaration a law, which was suitable to their other acts of ingenuity to keep the church for ever under the same indulgence and without any settlement; which being quickly perceived, there was no further progress in it." The bill was brought in by sir Matthew Hale.

[x] Collier, who of course thinks this declaration an encroachment on the church, as well as on the legislative power, says, "For this reason it was

that a bill for confirming it would have easily passed through this house of commons had it not been for the resistance of the government.

Charles now dissolved the convention parliament, having obtained from it what was immediately necessary, but well aware that he could better accomplish his objects with another.[y] It was studiously inculcated by the royalist lawyers, that, as this assembly had not been summoned by the king's writ, none of its acts could have any real validity, except by the confirmation of a true parliament.[z] This doctrine, being applicable to the act of indemnity, left the kingdom in a precarious condition till an undeniable security could be obtained, and rendered the dissolution

Convention parliament dissolved.

overlooked at the assizes and sessions in several places in the country, where the dissenting ministers were indicted for not conforming pursuant to the laws in force:" p. 876. Neal confirms this, 586, and Kennet's Register, 374.

[y] [After the king had concluded his own speech by giving the royal assent to many bills at the prorogation of the convention parliament, the lord chancellor Hyde (not then a peer) requested his majesty's permission to address the two houses. His speech is long and eloquent, expressive of nothing but satisfaction, and recommending harmony to all classes. One passage is eloquent enough to be extracted: "They are too much in love with England, too partial to it, who believe it the best country in the world; there is a better earth, and a better air, and better, that is, a warmer sun in other countries; but we are no more than just when we say that England is an enclosure of the best people in the world, when they are well informed and instructed; a people, in sobriety of conscience, the most devoted to God Almighty; in the integrity of their affections, the most dutiful to the king; in their good manners and inclinations, most regardful and loving to the nobility; no nobility in Europe so entirely beloved by the people; there may be more awe and fear of them, but no such respect towards them as in England. I beseech your lordships do not undervalue this love," &c. Parl. Hist. iv. 170.—1845.]

[z] Life of Clarendon, 74. A plausible and somewhat dangerous attack had been made on the authority of this parliament from an opposite quarter, in a pamphlet written by one Drake, under the name of Thomas Philips, entitled 'The Long Parliament Revived,' and intended to prove that by the act of the late king, providing that they should not be dissolved but by the concurrence of the whole legislature, they were still in existence; and that the king's demise, which legally puts an end to a parliament, could not affect one that was declared permanent by so direct an enactment. This argument seems by no means inconsiderable; but the times were not such as to admit of technical reasoning. The convention parliament, after questioning Drake, finally sent up articles of impeachment against him; but the lords, after hearing him in his defence, when he confessed his fault, left him to be prosecuted by the attorney-general. Nothing more, probably, took place. Parl. Hist. 145, 157. This was in November and December 1660: but Drake's book seems still to have been in considerable circulation; at least I have two editions of it, both bearing the date of 1661. The argument it contains is purely legal; but the aim must have been to serve the presbyterian or parliamentarian cause. [The next parliament never give their predecessors any other name in the Journals than "the last assembly."]

almost necessary. Another parliament was called, of very different composition from the last. Possession and the standing ordinances against royalists had enabled the secluded members of 1648, that is, the adherents of the long parliament, to stem with some degree of success the impetuous tide of loyalty in the last elections, and put them almost upon an equality with the court. But in the new assembly cavaliers and the sons of cavaliers entirely predominated; the great families, the ancient gentry, the episcopal clergy, resumed their influence; the presbyterians and sectarians feared to have their offences remembered; so that we may rather be surprised that about fifty or sixty who had belonged to the opposite side found places in such a parliament, than that its general complexion should be decidedly royalist. The presbyterian faction seemed to lie prostrate at the feet of those over whom they had so long triumphed, without any force of arms or civil convulsion, as if the king had been brought in against their will. Nor did the cavaliers fail to treat them as enemies to monarchy, though it was notorious that the restoration was chiefly owing to their endeavours.[a]

Different complexion of the new parliament.

The new parliament gave the first proofs of their disposition by voting that all their members should receive the sacrament on a certain day according to the rites of the church of England; and that the solemn league and covenant should be burned by the common hangman.[b] They excited still more serious alarm by an evident reluctance to confirm the late act of indemnity, which the king at the opening of the session had pressed upon their attention. Those who had suffered the sequestrations and other losses of a vanquished party could not endure to abandon what they reckoned a just reparation. But Clarendon adhered

[a] Complaints of insults on the presbyterian clergy were made to the late parliament. Parl. Hist. 160. The Anglicans inveighed grossly against them on the score of their past conduct, notwithstanding the act of indemnity. Kennet's Register, 156. See, as a specimen, South's Sermons, passim.

[b] Journals, 17th of May, 1661. The previous question was moved on this vote, but lost by 223 to 103; Morice, the secretary of state, being one of the tellers for the minority. Monk, I believe, to whom Morice owed his elevation, did what he could to prevent violent measures against the presbyterians. Alderman Love was suspended from sitting in the house, July 3, for not having taken the sacrament. I suppose that he afterwards conformed; for he became an active member of the opposition.

with equal integrity and prudence to this fundamental principle of the Restoration; and, after a strong message from the king on the subject, the commons were content to let the bill pass with no new exceptions.[c] They gave, indeed, some relief to the ruined cavaliers by voting 60,000*l.* to be distributed among that class; but so inadequate a compensation did not assuage their discontents.

It has been mentioned above that the late house of commons had consented to the exception of Vane and Lambert from indemnity on the king's promise that they should not suffer death. They had lain in the Tower accordingly, without being brought to trial. The regicides who had come in under the proclamation were saved from capital punishment by the former act of indemnity. But the present parliament abhorred this lukewarm lenity. A bill was brought in for the execution of the king's judges in the Tower; and the attorney-general was requested to proceed against Vane and Lambert.[d] The former was

Condemnation of Vane.

[c] Journals, June 14, &c.; Parl. Hist. 209; Life of Clarendon, 71; Burnet, 230. A bill discharging the loyalists from all interest exceeding three per cent. on debts contracted before the wars passed the commons, but was dropped in the other house. The great discontent of this party at the indemnity continued to show itself in subsequent sessions. Clarendon mentions, with much censure, that many private bills passed about 1662, annulling conveyances of lands made during the troubles: p. 162, 163. One remarkable instance ought to be noticed as having been greatly misrepresented. At the earl of Derby's seat of Knowsley in Lancashire a tablet is placed to commemorate the ingratitude of Charles II. in having refused the royal assent to a bill which had passed both houses for restoring the son of the earl of Derby, who had lost his life in the royal cause, to his family estate. This has been so often reprinted by tourists and novelists that it passes currently for a just reproach on the king's memory. It was, however, in fact, one of his most honourable actions. The truth is, that the cavalier faction carried through parliament a bill to make void the conveyances of some manors which lord Derby had voluntarily sold before the restoration, in the very face of the act of indemnity, and against all law and justice. Clarendon, who, together with some very respectable peers, had protested against this measure in the upper house, thought it his duty to recommend the king to refuse his assent. Lords' Journals, Feb. 6 and May 14, 1662. There is so much to blame in both the minister and his master, that it is but fair to give them credit for that which the pardonable prejudices of the family interested have led it to misstate.

[d] Commons' Journals, 1st July, 1661. A division took place, November 26, on a motion to lay this bill aside, in consideration of the king's proclamation; which was lost by 124 to 109: lord Cornbury (Clarendon's son) being a teller for the Noes. The bill was sent up to the lords Jan. 27, 1662. See also Parl. Hist. 217, 225. Some of their proceedings trespassed upon the executive power, and infringed the prerogative they laboured to exalt. But long interruption of the due course of the constitution had made its boundaries indistinct. Thus, in the convention parliament, the bodies of Cromwell, Bradshaw, Ireton, and others,

dropped in the house of lords; but those formidable chiefs of the commonwealth were brought to trial. Their indictments alleged as overt acts of high treason against Charles II. their exercise of civil and military functions under the usurping government; though not, as far as appears, expressly directed against the king's authority, and certainly not against his person. Under such an accusation many who had been the most earnest in the king's restoration might have stood at the bar. Thousands might apply to themselves, in the case of Vane, the beautiful expression of Mrs. Hutchinson, as to her husband's feelings at the death of the regicides, that "he looked on himself as judged in their judgment, and executed in their execution." The stroke fell upon one, the reproach upon many.

Its injustice.

The condemnation of sir Henry Vane was very questionable, even according to the letter of the law. It was plainly repugnant to its spirit. An excellent statute enacted under Henry VII., and deemed by some great writers to be only declaratory of the common law, but occasioned, no doubt, by some harsh judgments of treason which had been pronounced during the late competition of the houses of York and Lancaster, assured a perfect indemnity to all persons obeying a king for the time being, however defective his title might come to be considered when another claimant should gain possession of the throne. It established the duty of allegiance to the existing government upon a general principle; but in its terms it certainly presumed that government to be a monarchy. This furnished the judges upon the trial of Vane with a distinction of which they willingly availed themselves. They proceeded, however, beyond all bounds of constitutional precedents and of common sense when they determined that Charles II. had been king de facto as well as de jure from the moment of his father's death, though, in the words of their senseless sophistry, "kept

were ordered, Dec. 4, on the motion of colonel Titus, to be disinterred and hanged on a gibbet. The lords concurred in this order; but the mode of address to the king would have been more regular. Parl. Hist. 151. [These bodies had been previously removed from Westminster Abbey, and "cast together into a pit at the back door of the prebendaries' lodgings." The body of Blake was the same day, Sept. 12, 1660, taken up and "buried in St. Margaret's churchyard." It appears to have been done by an order of the king to the dean of Westminster. Kennet's Register p. 536.]

out of the exercise of his royal authority by traitors and rebels." He had indeed assumed the title during his exile, and had granted letters patent for different purposes, which it was thought proper to hold good after his restoration; thus presenting the strange anomaly, and as it were contradiction in terms, of a king who began to govern in the twelfth year of his reign. But this had not been the usage of former times. Edward IV., Richard III., Henry VII., had dated their instruments either from their proclamation or at least from some act of possession. The question was not whether a right to the crown descended according to the laws of inheritance, but whether such a right, divested of possession, could challenge allegiance as a bounden duty by the law of England. This is expressly determined in the negative by lord Coke in his Third Institute, who maintains a king "that hath right, and is out of possession," not to be within the statute of treasons. He asserts also that a pardon granted by him would be void; which by parity of reasoning must extend to all his patents.[e] We may consider, therefore, the execution of Vane as one of the most reprehensible actions of this bad reign. It not only violated the assurance of indemnity, but introduced a principle of sanguinary proscription, which would render the return of what is called legitimate government, under any circumstances, an intolerable curse to a nation.[f]

The king violated his promise by the execution of Vane, as much as the judges strained the law by his conviction. He had assured the last parliament, in answer to their address, that, if Vane and Lambert should be attainted by law, he would not suffer the sentence to be executed. Though the present parliament had urged the attorney-general to bring these delinquents to trial, they had never, by an address to the king, given him a colour for retracting his promise of mercy. It is worthy of notice that Clarendon does not say a syllable about Vane's trial; which affords a strong presumption that he thought it a breach of the act of indemnity. But we have on record a remarkable letter

[e] 3 Inst. 7. This appears to have been held in Bagot's case, 9 Edw. 4. See also Higden's View of the English Constitution, 1709.

[f] Foster, in his Discourse on High Treason, evidently intimates that he thought the conviction of Vane unjustifiable.

of the king to his minister, wherein he expresses his resentment at Vane's bold demeanour during his trial, and intimates a wish for his death, though with some doubts whether it could be honourably done.[g] Doubts of such a nature never lasted long with this prince; and Vane suffered the week after. Lambert, whose submisive behaviour had furnished a contrast with that of Vane, was sent to Guernsey, and remained a prisoner for thirty years. The royalists have spoken of Vane with extreme dislike; yet it should be remembered that he was not only incorrupt, but disinterested, inflexible in conforming his public conduct to his principles, and averse to every sanguinary or oppressive measure; qualities not very common in revolutionary chiefs, and which honourably distinguished him from the Lamberts and Haslerigs of his party.[h]

Acts replacing the crown in its prerogatives.

No time was lost, as might be expected from the temper of the commons, in replacing the throne on its constitutional basis after the rude encroachments of the long parliament. They declared that there was no legislative power in either or both houses without the king; that the league and covenant was unlawfully imposed; that the sole supreme command of the militia, and of all forces by sea and land, had ever been by the laws of England the undoubted right of the crown; that neither house of parliament could pretend to it, nor could lawfully levy any war offensive or defensive against his majesty.[i] These last words appeared to go to a dangerous length, and to sanction the suicidal doctrine of absolute non-resistance. They made the law of high treason more strict during the king's life in pursuance of a precedent

[g] "The relation that has been made to me of sir H. Vane's carriage yesterday in the Hall is the occasion of this letter, which, if I am rightly informed, was so insolent as to justify all he had done; acknowledging no supreme power in England but a parliament, and many things to that purpose. You have had a true account of all; and if he has given new occasion to be hanged, certainly he is too dangerous a man to let live, if we can honestly put him out of the way. Think of this, and give me some account of it to-morrow; till when, I have no more to say to you. C." Indorsed in lord Clarendon's hand, "The king, June 7, 1662." Vane was beheaded June 14. Burnet (note in Oxford edition), p. 164. Harris's Lives, v. 32.

[h] Vane gave up the profits of his place as treasurer of the navy, which, according to his patent, would have amounted to 30,000*l.* per annum, if we may rely on Harris's Life of Cromwell, p. 260.

[i] 13 Car. 2, c. 1 & 6. A bill for settling the militia had been much opposed in the convention parliament, as tending to bring in martial law. Parl. Hist. iv, 145. It seems to have dropped.

in the reign of Elizabeth.[k] They restored the bishops to their seats in the house of lords; a step which the last parliament would never have been induced to take, but which met with little opposition from the present.[l] The violence that had attended their exclusion seemed a sufficient motive for rescinding a statute so improperly obtained, even if the policy of maintaining the spiritual peers were somewhat doubtful. The remembrance of those tumultuous assemblages which had overawed their predecessors in the winter of 1641, and at other times, produced a law against disorderly petitions. This statute provides that no petition or address shall be presented to the king or either house of parliament by more than ten persons; nor shall any one procure above twenty persons to consent or set their hands to any petition for alteration of matters established by law in church or state, unless with the previous order of three justices of the county, or the major part of the grand jury.[m]

Corporation act.

Thus far the new parliament might be said to have acted chiefly on a principle of repairing the breaches recently made in our constitution, and of re-establishing the just boundaries of the executive power; nor would much objection have been offered to their measures, had they gone no farther in the same course. The act for regulating corporations is much more questionable, and displayed a determination to exclude a considerable portion of the community from their civil rights. It enjoined all magistrates and persons bearing offices of trust in corporations to swear that they believed it unlawful, on any pretence whatever, to take arms against the king, and that they abhorred the traitorous position of bearing arms by his authority against his person, or against those that are commissioned by him. They were also to renounce all obligation arising out of the oath called the solemn league and covenant; in case of refusal, to be immediately removed from office. Those elected in future were, in addition to the same oaths, to have received

[k] C. 1.

[l] C. 2. The only opposition made to this was in the house of lords by the earl of Bristol and some of the Roman catholic party, who thought the bishops would not be brought into a toleration of their religion. Life of Clarendon, p. 138.

[m] C. 5.

the sacrament within one year before their election according to the rites of the English church.[n] These provisions struck at the heart of the presbyterian party, whose strength lay in the little oligarchies of corporate towns, which directly or indirectly returned to parliament a very large proportion of its members. Yet it rarely happens that a political faction is crushed by the terrors of an oath. Many of the more rigid presbyterians refused the conditions imposed by this act; but the majority found pretexts for qualifying themselves.

Repeal of the triennial act.

It could not yet be said that this loyal assembly had meddled with those safeguards of public liberty which had been erected by their great predecessors in 1641. The laws that Falkland and Hampden had combined to provide, those bulwarks against the ancient exorbitance of prerogative, stood unscathed; threatened from afar, but not yet betrayed by the garrison. But one of these, the bill for triennial parliaments, wounded the pride of royalty, and gave scandal to its worshippers; not so much on account of its object, as of the securities provided against its violation. If the king did not summon a fresh parliament within three years after a dissolution, the peers were to meet and issue writs of their own accord; if they did not within a certain time perform this duty, the sheriffs of every county were to take it on themselves; and, in default of all constituted authorities, the electors might assemble without any regular summons to choose representatives. It was manifest that the king must have taken a fixed resolution to trample on a fundamental law, before these irregular tumultuous modes of redress could be called into action; and that the existence of such provisions could not in any degree weaken or endanger the legal and limited monarchy. But the doctrine of passive obedience had now crept from the homilies into the statute-book; the parliament had not scrupled to declare the unlawfulness of defensive war

[n] 13 Car. 2, sess. 2, c. 1. This bill did not pass without strong opposition in the commons. It was carried at last by 182 to 77; Journals, July 5; but on a previous division for its commitment the numbers were 185 to 136. June 20. Prynne was afterwards reprimanded by the speaker for publishing a pamphlet against this act, July 15; but his courage had now forsaken him; and he made a submissive apology, though the censure was pronounced in a very harsh manner.

against the king's person; and it was but one step more to take away all direct means of counteracting his pleasure. Bills were accordingly more than once ordered to be brought in for repealing the triennial act; but no further steps were taken till the king thought it at length necessary in the year 1664 to give them an intimation of his desires.[o] A vague notion had partially gained ground that no parliament, by virtue of that bill, could sit for more than three years. In allusion to this, he told them, on opening the session of 1664, that he "had often read over that bill; and, though there was no colour for the fancy of the determination of the parliament, yet he would not deny that he had always expected them to consider the wonderful clauses in that bill, which passed in a time very uncareful for the dignity of the crown or the security of the people. He requested them to look again at it. For himself, he loved parliaments; he was much beholden to them; he did not think the crown could ever be happy without frequent parliaments; "but assure yourselves," he concluded, "if I should think otherwise, I would never suffer a parliament to come together by the means prescribed by that bill."[p]

So audacious a declaration, equivalent to an avowed design, in certain circumstances, of preventing the execution of the laws by force of arms, was never before heard from the lips of an English king; and would in any other times have awakened a storm of indignation from the commons. They were, however, sufficiently compliant to pass a bill for the repeal of that which had been enacted with unanimous consent in 1641, and had been hailed as the great palladium of constitutional monarchy. The preamble recites the said act to have been "in derogation of his majesty's just rights and prerogative inherent in the imperial crown of this realm for the calling and assembling of parliaments." The bill then repeals and annuls every clause and article in the fullest manner; yet, with an inconsistency not unusual in our statutes, adds a provision that parliaments shall not in future be intermitted for above three years

[o] Journals, 3rd April, 1662; 10th March, 1663.

[p] Parl. Hist. 289. Clarendon speaks very unjustly of the triennial act, forgetting that he had himself concurred in it. P. 221.

at the most. This clause is evidently framed in a different spirit from the original bill, and may be attributed to the influence of that party in the house which had begun to oppose the court, and already showed itself in considerable strength.[q] Thus the effect of this compromise was that the law of the long parliament subsisted as to its principle, without those unusual clauses which had been enacted to render its observance secure. The king assured them, in giving his assent to the repeal, that he would not be a day more without a parliament on that account. But the necessity of those securities, and the mischiefs of that false and servile loyalty which abrogated them, became manifest at the close of the present reign; nearly four years having elapsed between the dissolution of Charles's last parliament and his death.

Clarendon, the principal adviser, as yet, of the king since his restoration (for Southampton rather gave reputation to the administration than took that superior influence which belonged to his place of treasurer), has thought fit to stigmatize the triennial bill with the epithet of infamous. So wholly had he divested himself of the sentiments he entertained at the beginning of the long parliament, that he sought nothing more ardently than to place the crown again in a condition to run into those abuses and excesses against which he had once so much inveighed. "He did never dissemble," he says, "from the time of his return with the king, that the late rebellion could never be extirpated and pulled up by the roots, till the king's regal and inherent power and prerogative should be fully avowed and vindicated, and till the usurpations in both houses of parliament, since the year 1640, were disclaimed and made odious; and many other excesses, which had been affected by both before that time under the name of privileges, should be restrained or explained. For all which reformation the kingdom in general was very well disposed, when it pleased God to restore the king to it. The present parliament had done much, and would willingly have

[q] 16 Car. II. c. 1. We find by the Journals that some divisions took place during the passage of this bill, and though, as far as appears, on subordinate points, yet probably springing from an opposition to its principle. March 28 1664. There was by this time a regular party formed against the court.

prosecuted the same method, if they had had the same advice and encouragement."[r] I can only understand these words to mean that they might have been led to repeal other statutes of the long parliament, besides the triennial act, and that excluding the bishops from the house of peers; but, more especially, to restore the two great levers of prerogative, the courts of star-chamber and high commission. This would indeed have pulled up by the roots the work of the long parliament, which, in spite of such general reproach, still continued to shackle the revived monarchy. There had been some serious attempts at this in the house of lords during the session of 1661-2. We read in the Journals[s] that a committee was appointed to prepare a bill for repealing all acts made in the parliament begun the 3rd day of November, 1640, and for re-enacting such of them as should be thought fit. This committee some time after[t] reported their opinion, "that it was fit for the good of the nation that there be a court of like nature to the late court called the star-chamber; but desired the advice and directions of the house in these particulars following: Who should be judges? What matters should they be judges of? By what manner of proceedings should they act?" The house, it is added, thought it not fit to give any particular directions therein, Star-chamber but left it to the committee to proceed as they not restored. would. It does not appear that anything farther was done in this session; but we find the bill of repeal revived next year.[u] It is, however, only once mentioned. Perhaps it may be questionable whether, even amidst the fervid loyalty of 1661, the house of commons would have concurred in re-establishing the star-chamber. They had taken marked precautions in passing an act for the restoration of ecclesiastical jurisdiction, that it should not be construed to restore the high-commission court, or to give validity to the canons of 1640, or to enlarge in any manner the ancient authority of the church.[x] A tribunal still more formidable and obnoxious would hardly have found favour with a body of men who, as their behaviour shortly demonstrated,

[r] P. 383.
[s] Lords' Journals, 23rd and 24th Jan. 1662.
[t] 12th Feb.
[u] 19th March, 1663.
[x] 13 Car. II. c. 12.

might rather be taxed with passion and vindictiveness towards a hostile faction, than a deliberate willingness to abandon their English rights and privileges.

The striking characteristic of this parliament was a zealous and intolerant attachment to the established church, not losing an atom of their aversion to popery in their abhorrence of protestant dissent. In every former parliament since the Reformation the country party (if I may use such a word, by anticipation, for those gentlemen of landed estates who owed their seats to their provincial importance, as distinguished from courtiers, lawyers, and dependents on the nobility) had incurred with rigid churchmen the reproach of puritanical affections. They were implacable against popery, but disposed to far more indulgence with respect to nonconformity than the very different maxims of Elizabeth and her successors would permit. Yet it is obvious that the puritan commons of James I. and the high-church commons of Charles II. were composed, in a great measure, of the same families, and entirely of the same classes. But, as the arrogance of the prelates had excited indignation, and the sufferings of the scrupulous clergy begotten sympathy in one age, so the reversed scenes of the last twenty years had given to the former, or their adherents, the advantage of enduring oppression with humility and fortitude, and displayed in the latter, or at least many of their number, those odious and malevolent qualities which adversity had either concealed or rendered less dangerous. The gentry, connected for the most part by birth or education with the episcopal clergy, could not for an instant hesitate between the ancient establishment and one composed of men whose eloquence in preaching was chiefly directed towards the common people, and presupposed a degree of enthusiasm in the hearer which the higher classes rarely possessed. They dreaded the wilder sectaries, foes to property, or at least to its political influence, as much as to the regal constitution; and not unnaturally, though without perfect fairness, confounded the presbyterian or moderate nonconformist in the motley crowd of fanatics, to many of whose tenets he at least more approximated than the church of England minister.

There is every reason to presume, as I have already

remarked, that the king had no intention but to deceive the presbyterians and their friends in the convention parliament by his declaration of October, 1660.[y] He proceeded, after the dissolution of that assembly, to fill up the number of bishops, who had been reduced to nine, but with no further mention of suffragans, or of the council of presbyters, which had been announced in that declaration.[z] It does indeed appear highly probable that the scheme of Usher would have been found inconvenient and even impracticable; and reflecting men would perhaps be apt to say that the usage of primitive antiquity, upon which all parties laid so much stress, was rather a presumptive argument against the adoption of any system of church-government, in circumstances so widely different, than in favour of it. But inconvenient and impracticable provisions carry with them their own remedy; and the king might have respected his own word, and

Presbyterians deceived by the king.

[y] Clarendon, in his Life, p. 149, says that the king "had received the presbyterian ministers with grace; and did believe that he should work upon them by persuasions, having been well acquainted with their common arguments by the conversation he had had in Scotland, and *was very able to confute them.*" This is one of the strange absurdities into which Clarendon's prejudices hurry him in almost every page of his writings, and more especially in this continuation of his Life. Charles, as his minister well knew, could not read a common Latin book (Clarendon State Papers, iii. 567), and had no manner of acquaintance with theological learning, unless the popular argument in favour of popery is so to be called; yet he was very able to confute men who had passed their lives in study, on a subject involving a considerable knowledge of Scripture and the early writers in their original languages!

[z] Clarendon admits that this could not have been done till the former parliament was dissolved: 97. This means, of course, on the supposition that the king's word was to be broken. "The malignity towards the church," he says, "seemed increasing, and to be greater than at the coming in of the king." Pepys, in his Diary, has several sharp remarks on the misconduct and unpopularity of the bishops, though himself an episcopalian even before the restoration. "The clergy are so high that all people I meet with do protest against their practice." August 31, 1660. "I am convinced in my judgment that the present clergy will never heartily go down with the generality of the commons of England; they have been so used to liberty and freedom, and they are so acquainted with the pride and debauchery of the present clergy. He [Mr. Blackburn, a nonconformist] did give me many stories of the affronts which the clergy receive in all parts of England from the gentry and ordinary persons of the parish." November 9, 1663. The opposite party had recourse to the old weapons of pious fraud. I have a tract containing twenty-seven instances of remarkable judgments, all between June, 1660, and April, 1661, which befell divers persons for reading the common prayer or reviling godly ministers. This is entitled Annus Mirabilis; and, besides the above twenty-seven, attests so many prodigies, that the name is by no means misapplied. The bishops made large fortunes by filling up leases. Burnet, 260. And Clarendon admits them to have been too rapacious, though he tries to extenuate. P. 48.

the wishes of a large part of the church, without any formidable danger to episcopal authority. It would have been, however, too flagrant a breach of promise (and yet hardly greater than that just mentioned) if some show had not been made of desiring a reconciliation on the subordinate details of religious ceremonies and the liturgy. This produced a conference held at the Savoy, in May, 1661, between twenty-one Anglican and as many presbyterian divines: the latter were called upon to propose their objections; it being the part of the others to defend. They brought forward so long a list as seemed to raise little hope of agreement. Some of these objections to the service, as may be imagined, were rather captious and hypercritical; yet in many cases they pointed out real defects. As to ceremonies, they dwelt on the same scruples as had from the beginning of Elizabeth's reign produced so unhappy a discordance, and had become inveterate by so much persecution. The conference was managed with great mutual bitterness and recrimination; the one party stimulated by vindictive hatred and the natural arrogance of power; the other irritated by the manifest design of breaking the king's faith, and probably by a sense of their own improvidence in ruining themselves by his restoration. The chief blame, it cannot be dissembled, ought to fall on the churchmen. An opportunity was afforded of healing, in a very great measure, that schism and separation which, if they are to be believed, is one of the worst evils that can befall a Christian community. They had it in their power to retain, or to expel, a vast number of worthy and laborious ministers of the gospel, with whom they had, in their own estimation, no essential ground of difference. They knew the king, and consequently themselves, to have been restored with (I might almost say by) the strenuous co-operation of those very men who were now at their mercy. To judge by the rules of moral wisdom or of the spirit of Christianity (to which, notwithstanding what might be satirically said of experience, it is difficult not to think we have a right to expect that a body of ecclesiastics should pay some attention), there can be no justification for the Anglican party on this occasion. They have certainly one apology, the best

Savoy conference.

very frequently that can be offered for human infirmity; they had sustained a long and unjust exclusion from the emoluments of their profession, which begot a natural dislike towards the members of the sect that had profited at their expense, though not, in general, personally responsible for their misfortunes.*

The Savoy conference broke up in anger, each party more exasperated and more irreconcilable than before. This indeed has been the usual consequence of attempts to bring men to an understanding on religious differences by explanation or compromise. The public was apt to expect too much from these discussions; unwilling to believe either that those who have a reputation for piety can be wanting in desire to find the truth, or that those who are esteemed for ability can miss it. And this expectation is heightened by the language rather too strongly held by moderate and peaceable divines, that little more is required than an understanding of each other's meaning, to unite conflicting sects in a common faith. But as it generally happens that the disputes of theologians, though far from being so important as they appear to the narrow prejudices and heated passions of the combatants, are not wholly nominal, or capable of being reduced to a common form of words, the hopes of union and settlement vanish upon that closer inquiry which conferences and schemes of agreement produce.

*The fullest account of this conference, and of all that passed as to the comprehension of the presbyterians, is to be read in Baxter, whom Neal has abridged. Some allowance must, of course, be made for the resentment of Baxter; but his known integrity makes it impossible to discredit the main part of his narration. Nor is it necessary to rest on the evidence of those who may be supposed to have the prejudices of dissenters. For bishop Burnet admits that all the concern which seemed to employ the prelates' minds was not only to make no alteration on the presbyterians' account, but to straiten the terms of conformity far more than before the war. Those, however, who would see what can be said by writers of high-church principles, may consult Kennet's History of Charles II. p. 252, or Collier, p. 878. One little anecdote may serve to display the spirit with which the Anglicans came to the conference. Upon Baxter saying that their proceedings would alienate a great part of the *nation*, Stearne, bishop of Carlisle, observed to his associates, "He will not say *kingdom*, lest he should acknowledge a king." Baxter, p. 338. This was a very malignant reflection on a man who was well known never to have been of the republican party. It is true that Baxter seems to have thought, in 1659, that Richard Cromwell would have served the turn better than Charles Stuart; and, as a presbyterian, he thought very rightly. See p. 207, and part iii. p. 71. But, preaching before the parliament, April 30, 1660, he said it was none of our differences whether we should be loyal to our king; on that all were agreed. P. 217.

And though this may seem rather applicable to speculative controversies than to such matters as were debated between the church and the presbyterians at the Savoy conference, and which are in their nature more capable of compromise than articles of doctrine, yet the consequence of exhibiting the incompatibility and reciprocal alienation of the two parties in a clearer light was nearly the same.

A determination having been taken to admit of no extensive comprehension, it was debated by the government whether to make a few alterations in the liturgy, or to restore the ancient service in every particular. The former advice prevailed, though with no desire or expectation of conciliating any scrupulous persons by the amendments introduced.[b] These were by no means numerous, and in some instances rather chosen in order to irritate and mock the opposite party than from any compliance with their prejudices. It is indeed very probable, from the temper of the new parliament, that they would not have come into more tolerant and healing measures. When the act of uniformity was brought into the house of lords, it was found not only to restore all the ceremonies and other matters to which objection had been taken, but to contain fresh clauses more intolerable than the rest to the presbyterian clergy. One of these enacted that not only every beneficed minister, but fellow of a college, or even schoolmaster, should declare his unfeigned assent and consent to all and everything contained in the book of common prayer.[c] These words, however capable of being eluded and explained away, as such subscriptions always are,

Act of uniformity.

[b] Life of Clarendon, 147. He observes that the alterations made did not reduce one of the opposite party to the obedience of the church. Now, in the first place, he could not know this; and, in the next, he conceals from the reader that, on the whole matter, the changes made in the liturgy were more likely to disgust than to conciliate. Thus, the puritans having always objected to the number of saints' days, the bishops added a few more; and the former having given very plausible reasons against the apocryphal lessons in the daily service, the others inserted the legend of Bel and the Dragon, for no other purpose than to show contempt of their scruples. The alterations may be seen in Kennet's Register, 585. The most important was the restoration of a rubric inserted in the communion service under Edward VI., but left out by Elizabeth, declaring against any corporal presence in the Lord's supper. This gave offence to some of those who had adopted that opinion, especially the duke of York, and perhaps tended to complete his alienation from the Anglican church. Burnet, i. 183.

[c] 13 & 14 Car. II., c. iv. § 3.

seemed to amount, in common use of language, to a complete approbation of an entire volume, such as a man of sense hardly gives to any book, and which, at a time when scrupulous persons were with great difficulty endeavouring to reconcile themselves to submission, placed a new stumblingblock in their way, which, without abandoning their integrity, they found it impossible to surmount.

The temper of those who chiefly managed church affairs at this period displayed itself in another innovation tending to the same end. It had been not unusual from the very beginnings of our Reformation to admit ministers ordained in foreign protestant churches to benefices in England. No re-ordination had ever been practised with respect to those who had received the imposition of hands in a regular church: and hence it appears that the church of England, whatever tenets might latterly have been broached in controversy, did not consider the ordination of presbyters invalid. Though such ordinations as had taken place during the late troubles, and by virtue of which a great part of the actual clergy were in possession, were evidently irregular, on the supposition that the English episcopal church was then in existence, yet, if the argument from such great convenience as men call necessity was to prevail, it was surely worth while to suffer them to pass without question for the present, enacting provisions, if such were required, for the future. But this did not fall in with the passion and policy of the bishops, who found a pretext for their worldly motives of action in the supposed divine right and necessity of episcopal succession; a theory naturally more agreeable to arrogant and dogmatical ecclesiastics than that of Cranmer, who saw no intrinsic difference between bishops and priests; or of Hooker, who thought ecclesiastical superiorities, like civil, subject to variation: or of Stillingfleet, who had lately pointed out the impossibility of ascertaining with clearness the real constitution of the apostolical church from the inconclusive testimonies that either Scripture or antiquity furnishes. It was therefore enacted in the statute for uniformity that no person should hold any preferment in England without having received episcopal ordination. There seems to be little or no objection

to this provision, if ordination be considered as a ceremony of admission into a particular society; but, according to the theories which both parties had embraced in that age, it conferred a sort of mysterious indelible character, which rendered its repetition improper.[d]

Ejection of non-conformist clergy.

The new act of uniformity succeeded to the utmost wishes of its promoters. It provided that every minister should, before the feast of St. Bartholomew, 1662, 'publicly declare his assent and consent to everything contained in the book of common prayer, on pain of being ipso facto deprived of his benefice.[e] Though even the long parliament had reserved a fifth of the profits to those who were rejected for refusing the covenant, no mercy could be obtained from the still greater bigotry of the present; and a motion to make that allowance to nonconforming ministers was lost by 94 to 87.[f] The lords had shown a more temperate spirit, and made several alterations of a conciliating nature. They objected to extending the subscription required by the act to schoolmasters. But the commons urged in a conference the force of education, which made it necessary to take care for the youth. The upper house even inserted a proviso, allowing the king

[d] Life of Clarendon, 152. Burnet, 256. Morley, afterwards bishop of Winchester, was engaged just before the restoration in negotiating with the presbyterians. They stuck out for the negative voice of the council of presbyters and for the validity of their ordinations. Clar. State Papers, 727. He had two schemes to get over the difficulty: one to pass them over sub silentio; the other, a hypothetical re-ordination, on the supposition that something might have been wanting before, as the church of Rome practises about re-baptization. The former is a curious expedient for those who pretend to think presbyterian ordinations really null. Id. 738.

[e] The day fixed upon suggested a comparison which, though severe, was obvious. A modern writer has observed on this, "They were careful not to remember that the same day, and for the same reason, because the tithes were commonly due at Michaelmas, had been appointed for the former ejectment, when four times as many of the loyal clergy were deprived for fidelity to their sovereign." Southey's Hist. of the Church, ii. 467. That the day was chosen in order to deprive the incumbent of a whole year's tithes, Mr. Southey has learned from Burnet; and it aggravates the cruelty of the proceeding—but where has he found his precedent? The Anglican clergy were rejected for refusing the covenant at no one definite period, as, on recollection, Mr. S. would be aware; nor can I find any one parliamentary ordinance in Husband's Collection that mentions St. Bartholomew's day. There was a precedent indeed in that case, which the government of Charles did not choose to follow. One-fifth of the income had been reserved for the dispossessed incumbents: but it is said that they often did not get them. Kennet's Register, 392.

[f] Journals, April 26. This may perhaps have given rise to a mistake we find in Neal, 624, that the act of uniformity only passed by 186 to 180. There was no division at all upon the bill except that I have mentioned.

to dispense with the surplice and the sign of the cross; but the commons resolutely withstanding this and every other alteration, they were all given up.[g] Yet, next year, when it was found necessary to pass an act for the relief of those who had been prevented involuntarily from subscribing the declaration in due time, a clause was introduced declaring that the assent and consent to the book of common prayer required by the said act should be understood only as to practice and obedience, and not otherwise. The duke of York and twelve lay peers protested against this clause, as destructive to the church of England as now established; and the commons vehemently objecting to it, the partisans of moderate counsels gave way as before.[h] When the day of St. Bartholomew came, about 2000 persons resigned their preferments rather than stain their consciences by compliance—an act to which the more liberal Anglicans, after the bitterness of immediate passions had passed away, have accorded that praise which is due to heroic virtue in an enemy. It may justly be said that the episcopal clergy had set an example of similar magnanimity in refusing to take the covenant. Yet, as that was partly of a political nature, and those who were ejected for not taking it might hope to be restored through the success of the king's arms, I do not know that it was altogether so eminent an act of self-devotion as the presbyterian clergy displayed on St. Bartholomew's day. Both of them afford striking contrasts to the pliancy of the English church in the greater question of the preceding century, and bear witness to a remarkable integrity and consistency of principle.[i]

[g] The report of the conference, Lords' Journals, 7th May, is altogether rather curious.

[h] Lords' Journals, 25th and 27th July, 1663. Ralph, 58.

[i] Neal, 625-636. Baxter told Burnet, as the latter says, p. 185, that not above 300 would have resigned had the terms of the king's declaration been adhered to. The blame, he goes on, fell chiefly on Sheldon. But Clarendon was charged with entertaining the presbyterians with good words, while he was giving way to the bishops. See also p. 268. Baxter puts the number of the deprived at 1800 or 2000. Life, 384. And it has generally been reckoned about 2000; though Burnet says it has been much controverted. If indeed we can rely on Calamy's account of the ejected ministers, abridged by Palmer, under the title of the Nonconformist's Memorial, the number must have been full 2400, including fellows of colleges, though not in orders. Palmer says that a manuscript catalogue gives 2257 names. Kennet, however (Register, 807), notices great mistakes of Calamy in respect only to one diocese, that of Peterborough. Probably both in this collection and in that of Walker on

No one who has any sense of honesty and plain dealing can pretend that Charles did not violate the spirit of his declarations, both that from Breda and that which he published in October, 1660. It is idle to say that those declarations were subject to the decision of parliament, as if the crown had no sort of influence in that assembly, nor even any means of making its inclinations known. He had urged them to confirm the act of indemnity, wherein he thought his honour and security concerned: was it less easy to obtain, or at least to ask for, their concurrence in a comprehension or toleration of the presbyterian clergy? Yet, after mocking those persons with pretended favour, and even offering bishoprics to some of their number by way of purchasing their defection, the king made no effort to mitigate the provisions of the act of uniformity; and Clarendon strenuously supported them through both houses of parliament.[k] This behaviour in the minister sprang from real bigotry and dislike of the presbyterians; but Charles was influenced by a very different motive, which had become the secret spring of all his policy. This requires to be fully explained.

Hopes of the catholics.

Charles, during his misfortunes, had made repeated promises to the pope and the great catholic princes of relaxing the penal laws against his subjects of that religion—promises which he well knew to be the necessary condition of their assistance. And, though he never received any succour which could demand the performance of these assurances, his desire to stand well with France and Spain, as well as a sense of what was really due to the English catholics, would have disposed him to grant every indulgence which the temper of his people should permit. The laws were highly severe in some cases sanguinary; they were enacted in very different times, from plausible motives of distrust, which it would be now both absurd and ungrateful to retain. The catholics had been the most strenuous of the late king's adherents, the greatest suf-

the other side, as in all martyrologies, there are abundant errors; but enough will remain to afford memorable examples of conscientious suffering; and we cannot read without indignation Kennet's endeavours, in the conclusion of this volume, to extenuate the praise of the deprived presbyterians by captious and unfair arguments.

[k] See Clarendon's feeble attempt to vindicate the king from the charge of breach of faith, 157.

ferers for their loyalty. Out of about five hundred gentlemen who lost their lives in the royal cause, one-third, it has been said, were of that religion.[m] Their estates had been selected for confiscation when others had been admitted to compound. It is, however, certain that after the conclusion of the war, and especially during the usurpation of Cromwell, they declined in general to provoke a government which showed a good deal of connivance towards their religion, by keeping up any connexion with the exiled family.[n] They had, as was surely very natural, one paramount object in their political conduct, the enjoyment of religious liberty; whatever debt of gratitude they might have owed to Charles I. had been amply paid; and perhaps they might reflect that he never scrupled, in his various negotiations with the parliament, to acquiesce in any proscriptive measures suggested against popery. This apparent abandonment, however, of the royal interests excited the displeasure of Clarendon, which was increased by a tendency some of the catholics showed to unite with Lambert, who was understood to be privately of their religion, and by an intrigue carried on in 1659, by the machinations of Buckingham with some priests, to set up the duke of York for the crown. But the king retained no resentment of the general conduct of this party; and was desirous to give them a testimony of his confidence by mitigating the penal laws against their religion. Some steps were taken towards this by the house of lords in the session of 1661; and there seems little doubt that the statutes at least inflicting capital punishments would have been repealed without difficulty, if the catholics had not lost the favourable moment by some disunion among themselves, which the never-ceasing intrigues of the Jesuits contrived to produce.[o]

[m] A list of these, published in 1660, contains more than 170 names. Neal, 590.

[n] Sir Kenelm Digby was supposed to be deep in a scheme that the catholics, in 1649, should support the commonwealth with all their power, in return for liberty of religion. Carte's Letters, i. 216, et post. We find a letter from him to Cromwell in 1656 (Thurloe, iv. 591), with great protestations of duty.

[o] See Lords' Journals, June and July, 1661, or extracts from them in Kennet's Register, 469, &c., 620, &c., and 798, where are several other particulars worthy of notice. Clarendon, 143, explains the failure of this attempt at a partial toleration (for it was only meant as to the exercise of religious rites in private houses) by the persevering opposition of the Jesuits to the oath of allegiance, to which the lay catholics, and generally the so-

Bias of the king towards them.

There can be no sort of doubt that the king's natural facility, and exemption from all prejudice in favour of established laws, would have led him to afford every indulgence that could be demanded to his catholic subjects, many of whom were his companions or his counsellors, without any propensity towards their religion. But it is morally certain that during the period of his banishment he had imbibed, as deeply and seriously as the character of his mind would permit, a persuasion that, if any scheme of Christianity were true, it could only be found in the bosom of an infallible church; though he was never reconciled, according to the formal profession which she exacts, till the last hours of his life. The secret, however, of his inclinations, though disguised to the world by the appearance, and probably sometimes more than the appearance, of carelessness and infidelity, could not be wholly concealed from his court. It appears the most natural mode of accounting for the sudden conversion of the earl of Bristol to popery, which is generally agreed to have been insincere. An ambitious intriguer, holding the post of secretary of state, would not have ventured such a step without some grounds of confidence in his master's wishes; though his characteristic precipitancy hurried him forward to destroy his own hopes. Nor are there wanting proofs that the protestantism of both the brothers was greatly suspected in England before the Restoration.[p] These suspicions acquired strength after the king's return, through his manifest intention not to

cular priests, had long ceased to make objection. The house had voted that the indulgence should not extend to Jesuits, and that they would not alter the oaths of allegiance or supremacy. The Jesuits complained of the distinction taken against them; and asserted, in a printed tract (Kennet, ubi suprà), that since 1616 they had been inhibited by their superiors from maintaining the pope's right to depose sovereigns. See also Butler's Mem. of Catholics, ii. 27, iv. 142; and Burnet, i. 194.

[p] The suspicions against Charles were very strong in England before the restoration, so as to alarm his emissaries: "Your master," Mordaunt writes to Ormond, Nov. 10, 1659, "is utterly ruined as to his interest here in whatever party, if this be true." Carte's Letters, ii. 264, and Clar. State Papers, iii. 602. But an anecdote related in Carte's Life of Ormond, ii. 255, and Harris's Lives, v. 54, which has obtained some credit, proves, if true, that he had embraced the Roman catholic religion as early as 1659, so as even to attend mass. This cannot be reckoned out of question; but the tendency of the king's mind before his return to England is to be inferred from all his behaviour. Kennet (Complete Hist. of England, iii. 237) plainly insinuates that the project for restoring popery began at the treaty of the Pyrenees; and see his Register, p. 852.

marry a protestant; and still more through the presumptuous demeanour of the opposite party, which seemed to indicate some surer grounds of confidence than were yet manifest. The new parliament in its first session had made it penal to say that the king was a papist or popishly affected; whence the prevalence of that scandal may be inferred.[q]

Charles had no assistance to expect, in his scheme of granting a full toleration to the Roman faith, from his chief adviser Clarendon? A repeal of the sanguinary laws, a reasonable connivance, perhaps in some cases a dispensation—to these favours he would have acceded. But in his creed of policy the legal allowance of any but the established religion was inconsistent with public order, and with the king's ecclesiastical prerogative. This was also a fixed principle with the parliament, whose implacable resentment towards the sectaries had not inclined them to abate in the least of their abhorrence and apprehension of popery. The church of England, distinctly and exclusively, was their rallying-point; the crown itself stood only second in their affections. The king, therefore, had recourse to a more subtle and indirect policy. If the terms of conformity had been so far relaxed as to suffer the continuance of the presbyterian clergy in their benefices, there was every reason to expect, from their known disposition, a determined hostility to all approaches towards popery, and even to its toleration. It was therefore the policy of those who had the interests of that cause at heart to permit no deviation from the act of uniformity, to resist all endeavours at a comprehension of dissenters within the pale of the church, and to make them look up to the king for indulgence in their separate way of worship. They were to be taught that, amenable to the same laws as the Romanists, exposed to the oppression of the same enemies, they must act in concert for a common benefit.[r] The presbyterian ministers, disheartened at the violence of the parliament, had recourse to Charles, whose affability and fair promises they were loth to distrust, and implored his dispensation for their nonconformity. The king, naturally irresolute,

Resisted by Clarendon and the parliament.

[q] 13 Car. 2, c. 1.

[r] Burnet, i. 179.

and doubtless sensible that he had made a bad return to those who had contributed so much towards his restoration, was induced, at the strong solicitation of lord Manchester, to promise that he would issue a declaration suspending the execution of the statute for three months. Clarendon, though he had been averse to some of the rigorous clauses inserted in the act of uniformity, was of opinion that, once passed, it ought to be enforced without any connivance; and told the king, likewise, that it was not in his power to preserve those who did not comply with it from deprivation. Yet, as the king's word had been given, he advised him rather to issue such a declaration than to break his promise. But, the bishops vehemently remonstrating against it, and intimating that they would not be parties to a violation of the law by refusing to institute a clerk presented by the patron on an avoidance for want of conformity in the incumbent, the king gave way, and resolved to make no kind of concession. It is remarkable that the noble historian does not seem struck at the enormous and unconstitutional prerogative which a proclamation suspending the statute would have assumed.*

Declaration for indulgence.

Instead of this very objectionable measure the king adopted one less arbitrary, and more consonant to his own secret policy. He published a declaration in favour of liberty of conscience, for which no provision had been made, so as to redeem the promises he had held forth at his accession. Adverting to these, he declared that, "as in the first place he had been zealous to settle the uniformity of the church of England in discipline, ceremony, and government, and should ever constantly maintain it, so, as for what concerns the penalties upon those who, living peaceably, do not conform themselves thereto, he should make it his special care, so far as in him lay without invading the freedom of parliament, to incline their wisdom next approaching sessions to concur with him in making some such act for that purpose as may enable him to exercise with a more universal satisfaction that

* Life of Clarendon, 159. He intimates that this begot a coldness in the bishops toward himself, which was never fully removed. Yet he had no reason to complain of them on his trial. See, too Pepys's Diary, Sept. 3, 1662.

power of dispensing which he conceived to be inherent in him."[t]

The aim of this declaration was to obtain from parliament a mitigation at least of all penal statutes in matters of religion, but more to serve the interests of catholic than of protestant nonconformity.[u] 'Except, however, the allusion to the dispensing power, which yet is very moderately alleged, there was nothing in it, according to our present opinions, that should have created offence. But the commons, on their meeting in February, 1663, presented an address denying that any obligation lay on the king by virtue of his declaration from Breda, which must be understood to depend on the advice of parliament, and slightly intimating that he possessed no such dispensing prerogative as was suggested. They strongly objected to the whole scheme of indulgence, as the means of increasing sectaries, and rather likely to occasion disturbance than to promote peace.[x] They remonstrated, in another address, against the release of Calamy, an eminent dissenter, who, having been imprisoned for transgressing the act of uniformity, was irregularly set at liberty by the king's personal order.[y] The king, undeceived as to the disposition of this loyal assembly to concur in his projects of religious liberty, was driven to more tedious and indirect courses in order to compass his end. He had the mortification of finding that the house of commons had imbibed, partly perhaps in consequence of this declaration, that jealous apprehension of popery which had caused so much of his father's ill fortune. On this topic the watchfulness of an English parliament could never be long at rest. The notorious insolence of the Romish priests, who, proud of the court's favour, dis-

Objected to by the commons.

[t] Parl. Hist. 257.

[u] Baxter intimates, 429, that some disagreement arose between the presbyterians and independents as to the toleration of popery, or rather, as he puts it, as to the active concurrence of the protestant dissenters in accepting such a toleration as should include popery. The latter, conformably to their general principles, were favourable to it; but the former would not make themselves parties to any relaxation of the penal laws against the church of Rome, leaving the king to act as he thought fit. By this stiffness it is very probable that they provoked a good deal of persecution from the court, which they might have avoided by falling into its views of a general indulgence.

[x] Parl. Hist. 260. An adjournment had been moved and lost by 161 to 119. Journals, 25th Feb.

[y] 19th Feb. Baxter, p. 429.

dained to respect the laws enough to disguise themselves, provoked an address to the king that they might be sent out of the kingdom; and bills were brought in to prevent the further growth of popery.[z]

Meanwhile, the same remedy, so infallible in the eyes of legislators, was not forgotten to be applied to the opposite disease of protestant dissent. Some had believed, of whom Clarendon seems to have been, that, all scruples of tender conscience in the presbyterian clergy being faction and hypocrisy, they would submit very quietly to the law, when they found all their clamour unavailing to obtain a dispensation from it. The resignation of 2000 beneficed ministers at once, instead of extorting praise, rather inflamed the resentment of their bigoted enemies; especially when they perceived that a public and perpetual toleration of separate worship was favoured by part of the court. Rumours of conspiracy and insurrection, sometimes false, but gaining credit from the notorious discontent both of the old commonwealth's party, and of many who had never been on that side, were sedulously propagated, in order to keep up the animosity of parliament against the ejected clergy;[a] and these are recited as the pretext of

Act against conventicles.

[z] Journals, 17th and 28th March, 1663. Parl. Hist. 264. Burnet, 274, says the declaration of indulgence was usually ascribed to Bristol, but in fact proceeded from the king, and that the opposition to it in the house was chiefly made by the friends of Clarendon. The latter tells us in his Life, 189, that the king was displeased at the insolence of the Romish party, and gave the judges general orders to convict recusants. The minister and historian either was or pretended to be his master's dupe; and, if he had any suspicions of what was meant as to religion (as he must surely have had), is far too loyal to hint them. Yet the one circumstance he mentions soon after, that the countess of Castlemaine suddenly declared herself a catholic, was enough to open his eyes and those of the world.

The Romish partisans assumed the tone of high loyalty, as exclusively characteristic of their religion; but affected, at this time, to use great civility towards the church of England. A book, entitled Philanax Anglicus, published under the name of Bellamy, the second edition of which is in 1663, after a most flattering dedication to Sheldon, launches into virulent abuse of the presbyterians and of the reformation in general, as founded on principles adverse to monarchy. This, indeed, was common with the ultra or high-church party; but the work in question, though it purports to be written by a clergyman, is manifestly a shaft from the concealed bow of the Roman Apollo.

[a] See proofs of this in Ralph, 53. Rapin, p. 78. There was in 1663 a trifling insurrection in Yorkshire, which the government wished to have been more serious, so as to afford a better pretext for strong measures; as may be collected from a passage in a letter of Bennet to the duke of Ormond, where he says—"The country was in greater readiness to prevent the disorders than perhaps were to be wished; but it being the effect of their own care, rather than his majesty's

an act passed in 1664, for suppressing seditious conventicles (the epithet being in this place wantonly and unjustly insulting), which inflicted on all persons above the age of sixteen, present at any religious meeting in other manner than is allowed by the practice of the church of England, where five or more persons besides the household should be present, a penalty of three months' imprisonment for the first offence, of six for the second, and of seven years' transportation for the third, on conviction before a single justice of peace.[b] This act, says Clarendon, if it had been vigorously executed, would no doubt have produced a thorough reformation.[c] Such is ever the language of the supporters of tyranny; when oppression does not succeed, it is because there has been too little of it. But those who suffered under this statute report very differently as to its vigorous execution. The gaols were filled, not only with ministers who had borne the brunt of former persecutions, but with the laity who attended them: and the hardship was the more grievous, that, the act being ambiguously worded, its construction was left to a single magistrate, generally very adverse to the accused.

Another of the same kind.

It is the natural consequence of restrictive laws to aggravate the disaffection which has served as their pretext; and thus to create a necessity for a legislature that will not retrace its steps to pass still onward in the course of severity. In the next session accordingly, held at Oxford in 1665, on account of the plague that ravaged the capital, we find a new and more inevitable blow aimed at the fallen church of Calvin. It was enacted that all persons in holy orders, who had not subscribed the act of uniformity, should swear that it is not lawful, upon any

commands, it is the less to be censured." Clarendon, 218, speaks of this as an important and extensive conspiracy; and the king dwelt on it in his next speech to the parliament. Parl. Hist. 289.

[b] 16 Car. II. c. 4. A similar bill had passed the commons in July, 1663, but hung some time in the upper house, and was much debated; the commons sent up a message (an irregular practice of those times) to request their lordships would expedite this and some other bills. The king seems to have been displeased at this delay; for he told them at their prorogation that he had expected some bills against conventicles and distempers in religion, as well as the growth of popery, and should himself present some at their next meeting. Parl. Hist. 288. Burnet observes, that to empower a justice of peace to convict without a jury was thought a great breach on the principles of the English constitution: 285.

[c] P. 221

pretence whatsoever, to take arms against the king; and that they did abhor that traitorous position of taking arms by his authority against his person, or against those that are commissioned by him, and would not at any time endeavour any alteration of government in church or state. Those who refused this oath were not only made incapable of teaching in schools, but prohibited from coming within five miles of any city, corporate town, or borough sending members to parliament.[d]

Remarks on them.

This persecuting statute did not pass without the opposition of the earl of Southampton, lord treasurer, and other peers. But archbishop Sheldon, and several bishops, strongly supported the bill, which had undoubtedly the sanction also of Clarendon's authority.[e] In the commons I do not find that any division took place; but an unsuccessful attempt was made to insert the word "legally" before commissioned; the lawyers, however, declared that this word must be understood.[f] Some of the nonconforming clergy took the oath upon this construction. But the far greater number refused. Even if they could have borne the solemn assertion of the principles of passive obedience in all possible cases, their scrupulous consciences revolted from a pledge to endeavour at no kind of alteration in church and state; an engagement, in its extended sense, irreconcilable with their own principles in religion, and with the civil duties of Englishmen. Yet to quit the town where they had long been connected, and where alone they had friends and disciples, for a residence in country villages, was an exclusion from the ordinary means of subsistence. The church of England had doubtless her provocations; but she made the retaliation much more than commensurate to the injury. No severity, comparable to this coldblooded persecution, had been inflicted by the late powers, even in the ferment and fury of a civil war. Encouraged by this easy triumph, the violent party in the house of commons thought it a good opportunity to give the same test a more sweeping application. A bill was brought in imposing this oath upon the whole nation;

[d] 17 Car. 2, c. 2.

[e] Burnet. Baxter, part iii. p. 2. Neal, p. 652.

[f] Burnet. Baxter.

that is, I presume (for I do not know that its precise nature is anywhere explained), on all persons in any public or municipal trust. This, however, was lost on a division by a small majority.[g]

It has been remarked that there is no other instance in history, where men have suffered persecution on account of differences which were admitted by those who inflicted it to be of such small moment. But, supposing this to be true, it only proves, what may perhaps be alleged as a sort of extenuation of these severe laws against nonconformists, that they were merely political, and did not spring from any theological bigotry. Sheldon, indeed, their great promoter, was so free from an intolerant zeal that he is represented as a man who considered religion chiefly as an engine of policy. The principles of religious toleration had already gained considerable ground over mere bigotry; but were still obnoxious to the arbitrary temper of some politicians, and wanted perhaps experimental proof of their safety to recommend them to the caution of others. There can be no doubt that all laws against dissent and separation from an established church, those even of the inquisition, have proceeded in a greater or less degree from political motives; and these appear to me far less odious than the disinterested rancour of superstition. The latter is very common among the populace, and sometimes among the clergy. Thus the presbyterians exclaimed against the toleration of popery, not as dangerous to the protestant establishment, but as a sinful compromise with idolatry; language which, after the first heat of the Reformation had abated, was never so current in the Anglican church.[h] In the case of these statutes against

[g] Mr Locke, in the 'Letter from a Person of Quality to his Friend in the Country,' printed in 1675 (see it in his Works, or in Parliamentary History, vol. iv. Appendix, No. 5), says it was lost by three votes, and mentions the persons. But the numbers in the Journals, October 27, 1665, appear to be 57 to 51. Probably he meant that those persons might have been expected to vote the other way.

[h] A pamphlet, with Baxter's name subscribed, called Fair Warning, or XXV Reasons against Toleration and Indulgence of Popery, 1663, is a pleasant specimen of this *argumentum ab inferno* "Being there is but one safe way to salvation, do you think that the protestant way is that way, or is it not? If it be not, why do you live in it? If it be, how can you find in your heart to give your subjects liberty to go another way? Can you, in your conscience, give them leave to go on in that course in which, in your conscience, you think you could not be saved?" Baxter, however, does not

nonconformists under Charles II., revenge and fear seem to have been the unmixed passions that excited the church party against those whose former superiority they remembered, and whose disaffection and hostility it was impossible to doubt.[1]

Dissatisfaction increases.

A joy so excessive and indiscriminating had accompanied the king's restoration, that no prudence or virtue in his government could have averted that reaction of popular sentiment which inevitably follows the disappointment of unreasonable hope. Those who lay their account upon blessings which no course of political administration can bestow, live, according to the poet's comparison, like the sick man, perpetually changing posture in search of the rest which nature denies; the dupes of successive revolutions, sanguine as children in all the novelties of politics, a new constitution, a new sovereign, a new minister, and as angry with the playthings when they fall short of their desires. What then was the discontent that must have ensued upon the restoration of Charles II.? The neglected cavalier, the persecuted presbyterian, the disbanded officer, had each his grievance; and felt that he was either in a worse situation than he had formerly been, or at least than he had expected to be. Though there were not the violent acts of military power which had struck every man's eyes under Cromwell, it cannot be said that personal liberty was secure, or that the magistrates had not considerable power of oppression, and that pretty unsparingly exercised

mention this little book in his Life; nor does he there speak violently about the toleration of Romanists.

[1] The clergy had petitioned the house of commons in 1664, inter alia, "That for the better observation of the Lord's day, and for the promoting of conformity, you would be pleased to advance the pecuniary mulct of twelve pence for each absence from divine service, in proportion to the degree, quality, and ability of the delinquent; that so the penalty may be of force sufficient to conquer the obstinacy of the nonconformists." Wilkins's Concilia, iv. 580. Letters from Sheldon to the commissary of the diocese of Canterbury, in 1669 and 1670, occur in the same collection, pp. 588, 589, directing him to inquire about conventicles; and if they cannot be restrained by ecclesiastical authority, to apply to the next justice of the peace in order to put them down. A proclamation appears also from the king, enjoining magistrates to do this. In 1673 the archbishop writes a circular to his suffragans, directing them to proceed against such as keep schools without licence. P. 593.

See in the Somers Tracts, vii. 586, a "true and faithful narrative" of the severities practised against nonconformists about this time. Baxter's Life is also full of proofs of persecution; but the most complete register is in Calamy's account of the ejected clergy.

towards those suspected of disaffection. The religious persecution was not only far more severe than it was ever during the commonwealth, but perhaps more extensively felt than under Charles I. Though the monthly assessments for the support of the army ceased soon after the restoration, several large grants were made by parliament, especially during the Dutch war; and it appears that in the first seven years of Charles II. the nation paid a far greater sum in taxes than in any preceding period of the same duration.[k] If then the people compared the national fruits of their expenditure, what a contrast they found, how deplorable a falling off in public honour and dignity since the days of the magnanimous usurper![m] They saw with indignation that Dunkirk, acquired by Cromwell, had been chaffered away by Charles (a transaction justifiable perhaps on the mere balance of profit and loss, but certainly derogatory to the pride of a great nation); that a war, needlessly commenced, had been carried on with much display of bravery in our seamen and their commanders, but no sort of good conduct in the government; and that a petty northern potentate, who would have trembled at the name of the commonwealth, had broken his faith towards us out of mere contempt of our inefficiency.[n]

[k] [Bishop Parker, certainly no enemy to the administration of Charles II., owns that nothing did the king so much harm as the immense grant of 2,500,000*l.* in 1674, to be levied in three years; from which time he thought that he should never want money, and put no restraint on his expenses. Hist. of his own Time, p. 245. In the session of 1666 great difficulties were found, as Marvell tells us, in raising money; "the nation's extreme necessity makes us exceedingly tender whereupon to fasten our resolutions." Marvell's Letters (in his Works), Nov. 6.—1845.]

[m] Pepys observes, 12th July, 1667, "how everybody now-a-days reflect upon Oliver and commend him, what brave things he did, and made all the neighbour princes fear him."

[n] [Clarendon, while he admits these discontents, and complaints of the decay of trade, asserts them to be unfounded. No estate could be put up to sale anywhere but a purchaser was found for it: vol. ii. p. 364. The main question, however, is at what rate he would purchase. Rents, he owns, had suddenly fallen 25 per cent., which caused a clamour against taxes, presumed to be the cause of it. But the truth is that wheat, which had been at a very high price for a few years just before and after the restoration, fell about 1663; and there is no doubt that the reign of Charles II. was not favourable to the landed interest. Lady Sunderland tells us, in a letter of 1681, that "the manor of Worme-Leighton, which, when I was married [1662] was let for 320*l.*, is now let for 230*l.*" Sidney's Diary, edited by Blencowe, 1843, vol. i. Introduction, p. 73. On the other hand, sir Josiah Child asserts that there were more men on change worth 10,000*l.* in 1680 than there were in 1660 worth 1000*l.*, and that a hundred coaches were kept for

Private life of the king.

These discontents were heightened by the private conduct of Charles, if the life of a king can in any sense be private, by a dissoluteness and contempt of moral opinion, which a nation, still in the main grave and religious, could not endure. The austere character of the last king had repressed to a considerable degree the common vices of a court which had gone to a scandalous excess under James. But the cavaliers in general affected a profligacy of manners, as their distinction from the fanatical party, which gained ground among those who followed the king's fortunes in exile, and became more flagrant after the restoration.[o] Anecdotes of court excesses, which required not the aid of exaggeration, were in daily circulation through the coffee-houses; those who cared least about the vice not failing to inveigh against the scandal. It is in the nature of a limited monarchy that men should censure very freely the private lives of their princes, as being more exempt from that immoral servility which blinds itself to the distinctions of right and wrong in elevated rank. And as a voluptuous court will always appear prodigal, because all expense in vice is needless, they had the mortification of believing that the public revenues were wasted on the vilest associates of the king's debauchery. We are, however, much indebted to the memory of Barbara duchess of Cleveland, Louisa duchess of Portsmouth, and Mrs. Eleanor Gwyn. We owe a tribute of gratitude to the Mays, the Killigrews, the Chiffinches, and the Grammonts. They played a serviceable part in ridding the kingdom of its besotted loyalty. They saved our forefathers from the star-chamber and the high-commission court; they laboured in their vocation against standing armies and corruption; they pressed forward the great ultimate security of English freedom, the expulsion of the house of Stuart.[p]

one formerly. Lands yielded twenty years' purchase which, when he was young, were not worth above eight or ten. See Macpherson's Annals of Commerce, ad A.D. 1660.—1845.]

[o] [Life of Clarendon, p. 34. Perhaps he lays too much the blame of this on the sectaries; yet we may suspect that the enthusiastic and antinomian conceits of these men had relaxed the old bonds of morality, and paved the way for the more glaring licentiousness of the restoration. See, too, Pepys's Diary, Aug. 31, 1660, for the rapid increase of dissoluteness about the court.]—1845.

[p] The Mémoires de Grammont are known to everybody, and are almost unique in their kind, not only for the

Among the ardent loyalists who formed the bulk of the present parliament, a certain number of a different class had been returned, not sufficient of themselves to constitute a very effective minority, but of considerable importance as a nucleus, round which the lesser factions that circumstances should produce might be gathered. Long sessions, and a long continuance of the same parliament, have an inevitable tendency to generate a systematic opposition to the measures of the crown, which it requires all vigilance and management to hinder from becoming too powerful. The sense of personal importance, the desire of occupation in business (a very characteristic propensity of the English gentry), the various inducements of private passion and interest, bring forward so many active spirits, that it was, even in that age, as reasonable to expect that the ocean should always be tranquil as that a house of commons should continue long to do the king's bidding with any kind of unanimity or submission. Nothing can more demonstrate the incompatibility of the tory system, which would place the virtual and effective, as well as nominal, administration of the executive government in the sole hands of the crown, with the existence of a representative assembly, than the history of this long parliament of Charles II.[q] None has ever been elected in circumstances so favourable for the crown, none ever brought with it such high notions

Opposition in parliament.

grace of their style and the vivacity of their pictures, but for the happy ignorance in which the author seems to have lived that any one of his readers could imagine that there are such things as virtue and principle in the world. In the delirium of thoughtless voluptuousness they resemble some of the memoirs about the end of Louis XV.'s reign, and somewhat later; though, I think, even in these there is generally some effort, here and there, at moral censure, or some affectation of sensibility. *They*, indeed, have always an awful moral; and in the light portraits of the court of Versailles (such, sometimes, as we might otherwise almost blush to peruse) we have before us the handwriting on the wall, the winter whirlwind hushed in its grim repose and expecting its prey, the vengeance of an oppressed people and long-forbearing Deity. No such retribution fell on the courtiers of Charles II., but they earned in their own age, what has descended to posterity, though possibly very indifferent to themselves, the disgust and aversion of all that was respectable among mankind.

[q] [Aubrey relates a saying of Harrington, just before the restoration, which shows his sagacity. "Well! the king will come in. Let him come in and call a parliament of the greatest cavaliers in England, so they be men of estates, and let them sit but seven years, and they will all turn commonwealth's men." Letters of Aubrey and others, from the Bodleian, vol. ii. p. 373. By commonwealth's men he probably meant only men who would stand up for public liberty against the crown.—1845.]

of prerogative; yet in this assembly a party soon grew up, and gained strength in every successive year, which the king could neither direct nor subdue. The methods of bribery, to which the court had largely recourse, though they certainly diverted some of the measures, and destroyed the character, of this opposition, proved in the end like those dangerous medicines which palliate the instant symptoms of a disease that they aggravate. The leaders of this parliament were, in general, very corrupt men; but they knew better than to quit the power which made them worth purchase. Thus the house of commons matured and extended those rights of inquiring into and controlling the management of public affairs, which had caused so much dispute in former times; and, as the exercise of these functions became more habitual, and passed with little or no open resistance from the crown, the people learned to reckon them unquestionable or even fundamental; and were prepared for that more perfect settlement of the constitution on a more republican basis, which took place after the revolution. The reign of Charles II., though displaying some stretches of arbitrary power, and threatening a great deal more, was, in fact, the transitional state between the ancient and modern schemes of the English constitution; between that course of government where the executive power, so far as executive, was very little bounded except by the laws, and that where it can only be carried on, even within its own province, by the consent and co-operation, in a great measure, of the parliament.

Appropriation of supplies.

The commons took advantage of the pressure which the war with Holland brought on the administration, to establish two very important principles on the basis of their sole right of taxation. The first of these was the appropriation of supplies to limited purposes. This, indeed, was so far from an absolute novelty, that it found precedents in the reigns of Richard II. and Henry IV.; a period when the authority of the house of commons was at a very high pitch. No subsequent instance, I believe, was on record till the year 1624, when the last parliament of James I., at the king's own suggestion, directed their supply for the relief of the Palatinate to be paid into the hands

of commissioners named by themselves. There were cases of a similar nature in the year 1641, which, though of course they could no longer be upheld as precedents, had accustomed the house to the idea that they had something more to do than simply to grant money, without any security or provision for its application. In the session of 1665, accordingly, an enormous supply, as it then appeared, of 1,250,000*l.*, after one of double that amount in the preceding year, having been voted for the Dutch war, sir George Downing, one of the tellers of the exchequer, introduced into the subsidy bill a proviso that the money raised by virtue of that act should be applicable only to the purposes of the war.[r] Clarendon inveighed with fury against this, as an innovation derogatory to the honour of the crown; but the king himself, having listened to some who persuaded him that the money would be advanced more easily by the bankers, in anticipation of the revenue, upon this better security for speedy repayment, insisted that it should not be thrown out.[s] That supplies, granted by parliament, are only to be expended for particular objects specified by itself, became, from this time, an undisputed principle, recognised by frequent and at length constant practice. It drew with it the necessity of estimates regularly laid before the house of commons; and, by exposing the management of the public revenues, has given to parliament, not only a real and effective control over an essential branch of the executive administration, but, in some measure, rendered them partakers in it.[t]

[r] This was carried on a division by 172 to 102. Journals, 25th November, 1665. It was to be raised "in a regulated subsidiary way, reducing the same to a certainty in all counties, so as no person, for his real or personal estate, be exempted." They seem to have had some difficulty in raising this vast subsidy. Parliamentary History, 305.

[s] 17 Car. 2, c. 1. The same clause is repeated next year, and has become regular. ["The bankers did not consist of above the number of five or six men, some whereof were aldermen and had been lord mayors of London, and all the rest were aldermen or had fined for aldermen. They were a tribe that had risen and grown up in Cromwell's time, and never were heard of before the late trouble, till when the whole trade of money had passed through the hands of the scriveners. They were, for the most part, goldsmiths—men known to be so rich, and of so good reputation, that all the money of the kingdom would be trusted or deposited in their hands." Life of Clarendon, vol. iii. p. 7.—1845.]

[t] Life of Clarendon, p. 315. Hatsell's Precedents, iii. 80. The principle of appropriation was not carried into full effect till after the Revolution. Id. 179, 484.

Commission of public accounts.

It was a consequence of this right of appropriation that the house of commons should be able to satisfy itself as to the expenditure of their moneys in the services for which they were voted. But they might claim a more extensive function, as naturally derived from their power of opening and closing the public purse, that of investigating the wisdom, faithfulness, and economy with which their grants had been expended. For this, too, there was some show of precedents in the ancient days of Henry IV.; but what undoubtedly had most influence was the recollection that during the late civil war, and in the times of the commonwealth, the house had superintended, through its committees, the whole receipts and issues of the national treasury. This had not been much practised since the restoration. But in the year 1666, the large cost and indifferent success of the Dutch war begetting vehement suspicions, not only of profuseness but of diversion of the public money from its proper purposes, the house appointed a committee to inspect the accounts of the officers of the navy, ordnance, and stores, which were laid before them, as it appears, by the king's direction. This committee, after some time, having been probably found deficient in powers, and particularly being incompetent to administer an oath, the house determined to proceed in a more novel and vigorous manner; and sent up a bill, nominating commissioners to inspect the public accounts, who were to possess full powers of inquiry, and to report with respect to such persons as they should find to have broken their trust. The immediate object of this inquiry, so far as appears from lord Clarendon's mention of it, was rather to discover whether the treasurers had not issued money without legal warrant than to enter upon the details of its expenditure. But that minister, bigoted to his tory creed of prerogative, thought it the highest presumption for a parliament to intermeddle with the course of government. He spoke of this bill as an encroachment and usurpation that had no limits, and pressed the king to be firm in his resolution never to consent to it.[u] Nor was the king less averse to a parliamentary commission

[u] Life of Clarendon, p. 368. Burnet observes, it was looked upon at the time as a great innovation: p. 335.

of this nature, as well from a jealousy of its interference with his prerogative as from a consciousness, which Clarendon himself suggests, that great sums had been issued by his orders which could not be put in any public account; that is (for we can give no other interpretation), that the moneys granted for the war, and appropriated by statute to that service, had been diverted to supply his wasteful and debauched course of pleasures.* It was the suspicion, or rather private knowledge, of this criminal breach of trust, which had led to the bill in question. But such a slave was Clarendon to his narrow prepossessions, that he would rather see the dissolute excesses which he abhorred suck nourishment from that revenue which had been allotted to maintain the national honour and interests, and which, by its deficiencies thus aggravated, had caused even in this very year the navy to be laid up, and the coasts to be left defenceless, than suffer them to be restrained by the only power to which thoughtless luxury would submit. He opposed the bill, therefore, in the house of lords, as he confesses, with much of that intemperate warmth which distinguished him, and with a contempt of the lower house and its authority, as imprudent in respect to his own interests as it was unbecoming and unconstitutional. The king prorogued parliament while

* Pepys's Diary has lately furnished some things worthy to be extracted. "Mr. W. and I by water to Whitehall, and there at sir George Carteret's lodgings sir William Coventry met; and we did debate the whole business of our accounts to the parliament; where it appears to us that the charge of the war from Sept. 1, 1664, to this Michaelmas, will have been but 3,200,000*l.*, and we have paid in that time somewhat about 2,200,000*l.*, so that we owe about 900,000*l.*: but our method of accounting, though it cannot, I believe, be far wide from the mark, yet will not abide a strict examination, if the parliament should be troublesome. Here happened a pretty question of sir William Coventry, whether this account of ours will not put my lord treasurer to a difficulty to tell what is become of all the money the parliament have given in this time for the war, which hath amounted to about 4,000,000*l.*, which nobody there could answer; but I perceive they did doubt what his answer could be." September 23, 1666.—The money granted the king for the war he afterwards reckons at 5,590,000*l.*, and the debt at 900,000*l.* The charge stated only at 3,200,000*l.* "So what is become of all this sum, 2,390,000*l.*!" He mentions afterwards, Oct. 8, the proviso in the poll-tax bill, that there shall be a committee of nine persons to have the inspection on oath of all the accounts of the money given and spent for the war, "which makes the king and court mad; the king having given order to my lord chamberlain to send to the playhouses and brothels, to bid all the parliament-men that were there to go to the parliament presently; but it was carried against the court by thirty or forty voices." It was thought, he says, Dec. 12, that above 400,000*l.* had gone into the privy purse since the war.

the measure was depending; but in hopes to pacify the house of commons, promised to issue a commission under the great seal for the examination of public accountants;[y] an expedient which was not likely to bring more to light than suited his purpose. But it does not appear that this royal commission, though actually prepared and sealed, was ever carried into effect; for in the ensuing session, the great minister's downfall having occurred in the mean time, the house of commons brought forward again their bill, which passed into a law. It invested the commissioners therein nominated with very extensive and extraordinary powers, both as to auditing public accounts and investigating the frauds that had taken place in the expenditure of money and employment of stores. They were to examine upon oath, to summon inquests if they thought fit, to commit persons disobeying their orders to prison without bail, to determine finally on the charge and discharge of all accountants; the barons of the exchequer, upon a certificate of their judgment, were to issue process for recovering money to the king's use, as if there had been an immediate judgment of their own court. Reports were to be made of the commissioners' proceedings from time to time to the king and to both houses of parliament. None of the commissioners were members of either house. The king, as may be supposed, gave way very reluctantly to this interference with his expenses. It brought to light a great deal of abuse and misapplication of the public revenues, and contributed doubtless in no small degree to destroy the house's confidence in the integrity of government, and to promote a more jealous watchfulness of the king's designs.[z] At the next meeting of parliament, in October, 1669, sir George Carteret, treasurer of the navy, was expelled the house for issuing money without legal warrant.

Sir Edward Hyde, whose influence had been almost annihilated in the last years of Charles I. through

[y] Life of Clarendon, p. 392.

[z] 19 & 20 Car. II. c. 1. Burnet, p. 374. They reported unaccounted balances of 1,509,161*l.*, besides much that was questionable in the payments. But, according to Ralph, p. 177, the commissioners had acted with more technical rigour than equity, surcharging the accountants for all sums not expended since the war began, though actually expended for the purposes of preparation.

the inveterate hatred of the queen and those who surrounded her, acquired by degrees the entire confidence of the young king, and baffled all the intrigues of his enemies. Guided by him, in all serious matters, during the latter years of his exile, Charles followed his counsels almost implicitly in the difficult crisis of the restoration. The office of chancellor and the title of earl of Clarendon were the proofs of the king's favour; but in effect, through the indolence and ill health of Southampton, as well as their mutual friendship, he was the real minister of the crown.[a] By the clandestine marriage of his daughter with the duke of York, he changed one brother from an enemy to a sincere and zealous friend, without forfeiting the esteem and favour of the other. And though he was wise enough to dread the invidiousness of such an elevation, yet for several years it by no means seemed to render his influence less secure.[b]

Decline of Clarendon's power.

[a] Burnet, p. 130. Southampton left all the business of the treasury, according to Burnet, p. 131, in the hands of sir Philip Warwick, "a weak but incorrupt man." The king, he says, chose to put up with his contradiction rather than make him popular by dismissing him. But in fact, as we see by Clarendon's instance, the king retained his ministers long after he was displeased with them. Southampton's remissness and slowness, notwithstanding his integrity, Pepys says, was the cause of undoing the nation as much as anything; "yet, if I knew all the difficulties he has lain under, and his instrument sir Philip Warwick, I might be of another mind." May 16, 1667.—He was willing to have done something, Clarendon tells us, p. 415, to gratify the presbyterians; on which account the bishops thought him not enough affected to the church. His friend endeavours to extenuate this heinous sin of tolerant principles.

[b] The behaviour of lord Clarendon on this occasion was so extraordinary, that no credit could have been given to any other account than his own. The duke of York, he says, informed the king of the affection and friendship that had long been between him and the young lady; that they had been long contracted, and that she was with child; and therefore requested his majesty's leave that he might publicly marry her. The marquis of Ormond by the king's order communicated this to the chancellor, who "broke out into an immoderate passion against the wickedness of his daughter; and said, with all imaginable earnestness, that as soon as he came home he would turn her out of his house as a strumpet to shift for herself, and would never see her again. They told him that his passion was too violent to administer good counsel to him; that they thought that the duke was married to his daughter; and that there were other measures to be taken than those which the disorder he was in had suggested to him. Whereupon he fell into new commotions; and said, if that were true, he was well prepared to advise what was to be done; that he had much rather his daughter should be the duke's whore than his wife: in the former case, nobody could blame him for the resolution he had taken, for he was not obliged to keep a whore for the greatest prince alive; and the indignity to himself he would submit to the good pleasure of God. But, if there were any reason to suspect the other, he was ready to give a positive judgment, in which he hoped their lordships would concur with

Both in their characters, however, and turn of thinking, there was so little conformity between Clarendon

him, that the king should immediately cause the woman *to be sent to the Tower and cast into the dungeon*, under so strict a guard that no person living should be admitted to come to her; and then that *an act of parliament should be immediately passed for cutting off her head, to which he would not only give his consent, but would very willingly be the first man that should propose it.* And whoever knew the man will believe that he said all this very heartily." Lord Southampton, he proceeds to inform us, on the king's entering the room at the time, said very naturally that the chancellor was mad, and had proposed such extravagant things that he was no more to be consulted with. This, however, did not bring him to his senses; for he repeated his strange proposal of "sending her presently to the Tower, and the rest;" imploring the king to take this course, as the only expedient that could free him from the evils that this business would otherwise bring upon him.

That any man of sane intellect should fall into such an extravagance of passion is sufficiently wonderful; that he should sit down in cool blood several years afterwards to relate it is still more so; and perhaps we shall carry our candour to an excess, if we do not set down the whole of this scene to overacted hypocrisy. Charles II., we may be very sure, could see it in no other light. And here I must take notice, by the way, of the singular observation the worthy editor of Burnet has made:—"King Charles's conduct in this business was excellent throughout; that of Clarendon *worthy an ancient Roman.*" We have indeed a Roman precedent for subduing the sentiments of nature, rather than permitting a daughter to incur disgrace through the passions of the great; but I think Virginius would not quite have understood the feelings of Clarendon. Such virtue was more like what Montesquieu calls "l'héroïsme de l'esclavage," and was just fit for the court of Gondar. But with all this violence that he records of himself, he deviates greatly from the truth: "The king" (he says) "afterwards spoke every day about it, and told the chancellor that he must behave himself wisely, for that the thing was remediless, and that his majesty knew that they were married; which would quickly appear to all men who knew that nothing could be done upon it. In this time the chancellor had conferred with his daughter, without anything of indulgence, and not only discovered that they were unquestionably married, but *by whom, and who were present at it, who would be ready to avow it;* which pleased him not, though it diverted him from using some of that rigour which he intended. And he saw no other remedy could be applied but that which he had proposed to the king, who thought of nothing like it." Life of Clarendon, 29, et post.

Every one would conclude from this that a marriage had been solemnized, if not before their arrival in England, yet before the chancellor had this conference with his daughter. It appears, however, from the duke of York's declaration in the books of the privy council, quoted by Ralph, p. 40, that he was contracted to Ann Hyde on the 24th of November, 1659, at Breda; and after that time lived with her as his wife, though very secretly; he married her 3rd Sept. 1660, according to the English ritual, lord Ossory giving her away. The first child was born Oct. 22, 1660. Now, whether the contract were sufficient to constitute a valid marriage will depend on two things; first, upon the law existing at Breda; secondly, upon the applicability of what is commonly called the rule of the lex loci to a marriage between such persons according to the received notions of English lawyers in that age. But, even admitting all this, it is still manifest that Clarendon's expressions point to an actual celebration, and are consequently intended to mislead the reader. Certain it is, that at the time the contract seems to have been reckoned only an honorary obligation. James tells us himself (Macpherson's Extracts, p. 17) that he promised to marry her; and "though, when he asked the king for his leave, he refused and dissuaded him from it, yet at last he opposed it no more, and the duke married her privately, and owned it some

and his master, that the continuance of his ascendancy can only be attributed to the power of early habit over the most thoughtless tempers. But it rarely happens that kings do not ultimately shake off these fetters, and release themselves from the sort of subjection which they feel in acting always by the same advisers. Charles, acute himself and cool-headed, could not fail to discover the passions and prejudices of his minister, even if he had wanted the suggestion of others who, without reasoning on such broad principles as Clarendon, were perhaps his superiors in judging of temporary business. He wished too, as is common, to depreciate a wisdom, and to suspect a virtue, which seemed to reproach his own vice and folly. Nor had Clarendon spared those remonstrances against the king's course of life which are seldom borne without impatience or resentment. He was strongly suspected by the king as well as his courtiers (though, according to his own account, without any reason) of having promoted the marriage of Miss Stewart with the duke of Richmond.[c]

time after." His biographer, writing from James's own manuscript, adds, "It may well be supposed that my lord chancellor did his part, but with great caution and circumspection, to soften the king in that matter which in every respect seemed so much for his own advantage." Life of James, 387. And Pepys inserts in his Diary, Feb. 23, 1661, "Mr. H. told me how my lord chancellor had lately got the duke of York and duchess, and her woman, my lord Ossory and a doctor, to make oath before most of the judges of the kingdom, concerning all the circumstances of their marriage. And, in fine, it is confessed that they were not fully married till about a month or two before she was brought to bed; but that they were contracted long before, and [were married] time enough for the child to be legitimate. But I do not hear that it was put to the judges to determine that it was so or not." There was no question to put about the child's legitimacy, which was beyond all doubt. He had said before that lord Sandwich told him, 17th Oct. 1660, "the king wanted him [the duke] to marry her, but he would not." This seems at first sight inconsistent with what James says himself. But at this time, though the private marriage had really taken place, he had been persuaded by a most infamous conspiracy of some profligate courtiers that the lady was of a licentious character, and that Berkeley, afterwards lord Falmouth, had enjoyed her favours. Life of Clarendon, 33. It must be presumed that those men knew only of a contract which they thought he could break. Hamilton, in the Memoirs of Grammont, speaks of this transaction with his usual levity, though the parties showed themselves as destitute of spirit as of honour and humanity. Clarendon, we must believe (and the most favourable hypothesis for him is to give up his veracity), would not permit his daughter to be made the victim of a few perjured debauchees, and of her husband's fickleness or credulity. [Upon reconsidering this note, I think it probable that Clarendon's conversation with his daughter, when he ascertained her marriage, was subsequent to the 3rd of September. It is always difficult to make out his dates.—1845.]

[c] Hamilton mentions this as the current rumour of the court, and Burnet has done the same. But Clarendon himself denies that he had any concern in it, or

But above all he stood in the way of projects which, though still probably unsettled, were floating in the king's mind. No one was more zealous to uphold the prerogative at a height where it must overtop and chill with its shadow the privileges of the people. No one was more vigilant to limit the functions of parliament, or more desirous to see them confiding and submissive. But there were landmarks which he could never be brought to transgress. He would prepare the road for absolute monarchy, but not introduce it; he would assist to batter down the walls, but not to march into the town. His notions of what the English constitution ought to be appear evidently to have been derived from the times of Elizabeth and James I., to which he frequently refers with approbation. In the history of that age he found much that could not be reconciled to any liberal principles of government. But there were two things which he certainly did not find—a revenue capable of meeting an extraordinary demand without parliamentary supply, and a standing army. Hence he took no pains, if he did not even, as is asserted by Burnet, discourage the proposal of others, to obtain such a fixed annual revenue for the king on the restoration as would have rendered it very rarely necessary to have recourse to parliament,[d] and did not advise the keeping up any part of the army. That a few troops were

any acquaintance with the parties. He wrote in too humble a strain to the king on the subject. Life of Clar. p. 454.

[d] Burnet says that Southampton had come into a scheme of obtaining 2,000,000*l.* as the annual revenue; which was prevented by Clarendon, lest it should put the king out of need of parliaments. This the king found out, and hated him mortally for it. P. 223. It is the fashion to discredit all that Burnet says. But observe what we may read in Pepys: "Sir W. Coventry did tell me it as the wisest thing that was ever said to the king by any statesman of his time; and it was by my lord treasurer that is dead, whom, I find, he takes for a very great statesman, that, when the king did show himself forward for passing the act of indemnity, he did advise the king that he would hold his hand in doing it, till he had got his power restored that had been diminished by the late times, and his revenue settled in such a manner as he might depend upon himself without resting upon parliaments, and then pass it. But my lord chancellor, who thought he could have the command of parliaments for ever, because for the king's sake they were awhile willing to grant all the king desired, did press for its being done; and so it was, and the king from that time able to do nothing with the parliament almost." March 20, 1669. Rari quippe boni! Neither Southampton nor Coventry make the figure in this extract we should wish to find; yet who were their superiors for integrity and patriotism under Charles II.? Perhaps Pepys, like most gossiping men, was not always correct.

retained was owing to the duke of York. Nor did he go the length that was expected in procuring the repeal of all the laws that had been enacted in the long parliament.[e]

These omissions sank deep in Charles's heart, especially when he found that he had to deal with an unmanageable house of commons, and must fight the battle for arbitrary power; which might have been achieved, he thought, without a struggle by his minister. There was still less hope of obtaining any concurrence from Clarendon in the king's designs as to religion. Though he does not once hint at it in his writings, there can be little doubt that he must have suspected his master's inclinations towards the church of Rome. The duke of York considered this as the most likely cause of his remissness in not sufficiently advancing the prerogative.[f] He was always opposed to the various schemes of a general indulgence towards popery, not only from his strongly protestant principles and his dislike of all toleration, but from a prejudice against the body of the English catholics, whom he thought to arrogate more on the ground of merit than they could claim. That interest, so powerful at court, was decidedly hostile to the chancellor; for the duke of York, who strictly adhered to him, if he had not kept his change of religion wholly secret, does not seem to have hitherto formed any avowed connexion with the popish party.[g]

This estrangement of the king's favour is sufficient to account for Clarendon's loss of power; but his entire ruin was rather accomplished by a strange coalition of enemies, which his virtues, or his errors and infirmities, had brought into

Loss of the king's favour. Coalition against Clarendon.

[e] Macpherson's Extracts from Life of James, 17, 18. Compare Innes's Life of James, published by Clarke, i. 391, 393. In the former work it is said that Clarendon, upon Venner's insurrection, advised that the guards should not be disbanded. But this seems to be a mistake in copying: for Clarendon, read the duke of York. Pepys, however, who heard all the gossip of the town, mentions the year after that the chancellor thought of raising an army, with the duke as general. Dec. 22, 1661.

[f] Ibid.

[g] The earl of Bristol, with all his constitutional precipitancy, made a violent attack on Clarendon, by exhibiting articles of treason against him in the house of lords in 1663; believing, no doubt, that the schemes of the intriguers were more mature, and the king more alienated, than was really the case, and thus disgraced himself at court instead of his enemy. Parl. Hist. 276. Life of Clar 209. Before this time Pepys had heard that the chancellor had lost the king's favour, and that Bristol, with Buckingham and two or three more, ruled him. May 15, 1662

union. The cavaliers hated him on account of the act of indemnity, and the presbyterians for that of uniformity. Yet the latter were not in general so eager in his prosecution as the others.[h] But he owed great part of the severity with which he was treated to his own pride and ungovernable passionateness, by which he had rendered very eminent men in the house of commons implacable, and to the language he had used as to the dignity and privileges of the house itself.[i] A sense of this eminent

[h] A motion to refer the heads of charge against Clarendon to a committee was lost by 194 to 128; Seymour and Osborne telling the noes, Birch and Clarges the ayes. Commons' Journals, Nov. 6, 1667. These names show how parties ran; Seymour and Osborne being high-flying cavaliers, and Birch a presbyterian. A motion that he be impeached for treason on the first article was lost by 172 to 103, the two former being tellers for the ayes: Nov. 9. In the Harleian MS. 881, we have a copious account of the debates on this occasion, and a transcript in No. 1218 Sir Heneage Finch spoke much against the charge of treason; Maynard seems to have done the same. A charge of secret correspondence with Cromwell was introduced merely ad invidiam, the prosecutors admitting that it was pardoned by the act of indemnity, but wishing to make the chancellor plead that: Maynard and Hampden opposed it, and it was given up out of shame without a vote. Vaughan, afterwards chief justice, argued that counselling the king to govern by a standing army was treason at common law, and seems to dispute what Finch laid down most broadly, that there can be no such thing as a common-law treason; relying on a passage in Glanvill, where "seductio domini regis" is said to be treason. Maynard stood up for the opposite doctrine. Waller and Vaughan argued that the sale of Dunkirk was treason, but the article passed without declaring it to be so; nor would the word have appeared probably in the impeachment, if a young lord, Vaughan, had not asserted that he could prove Clarendon to have betrayed the king's councils, on which an article to that effect was carried by 161 to 89. Garraway and Littleton were forward against the chancellor; but Coventry seems to have taken no great part. See Pepys's Diary, Dec. 3rd and 6th, 1667. Baxter also says that the presbyterians were by no means strenuous against Clarendon, but rather the contrary, fearing that worse might come for the country, as giving him credit for having kept off military government. Baxter's Life, part iii. 21. This is very highly to the honour of that party whom he had so much oppressed, if not betrayed. "It was a notable providence of God," he says, "that this man, who had been the great instrument of state, and done almost all, and had dealt so cruelly with the nonconformists, should thus by his own friends be cast out and banished; while those that he had persecuted were the most moderate in his cause, and many for him. And it was a great ease that befell the good people throughout the land by his dejection. For his way was to decoy men into conspiracies or to pretend plots, and upon the rumour of a plot the innocent people of many countries were laid in prison, so that no man knew when he was safe. Whereas since then, though laws have been made more and more severe, yet a man knoweth a little better what he is to expect when it is by a law that he is to be tried." Sham plots there seem to have been; but it is not reasonable to charge Clarendon with inventing them. Ralph, 122.

[i] In his wrath against the proviso inserted by sir George Downing, as above mentioned, in the bill of supply, Clarendon told him, as he confesses, that the king could never be well served while fellows of his condition were admitted to speak as much as they had a mind; and that in the best times such presumptions had been punished with imprisonment by the lords of the council, without the king's

person's great talents as well as general integrity and conscientiousness on the one hand, an indignation at the king's ingratitude and the profligate counsels of those who supplanted him on the other, have led most writers to overlook his faults in administration, and to treat all the articles of accusation against him as frivolous or unsupported. It is doubtless impossible to justify the charge of high treason on which he was impeached; but there are matters that never were or could be disproved; and our own knowledge enables us to add such grave accusations as must show Clarendon's unfitness for the government of a free country.[k]

His impeachment; some articles of it not unfounded.

1. It is the fourth article of his impeachment that he "advised and procured divers of his majesty's subjects to be imprisoned against law, in remote islands, garrisons, and other places, thereby to prevent them from the benefit of the law, and to produce precedents for the imprisoning any other of his majesty's subjects in like manner." This was undoubtedly true. There was some ground for apprehension on the part of the government from those bold spirits who had been accustomed to revolutions, and drew encouragement from the vices of the court and the embarrassments of the nation. Ludlow and Algernon Sidney, about the

Illegal imprisonments

taking notice of it: 321. The king was naturally displeased at this insolent language towards one of his servants, a man who had filled an eminent station, and done services, for a suggestion intended to benefit the revenue. And it was a still more flagrant affront to the house of commons, of which Downing was a member, and where he had proposed this clause, and induced the house to adopt it.

Coventry told Pepys "many things about the chancellor's dismissal not fit to be spoken; and yet not any unfaithfulness to the king, but *instar* omnium, that he was so great at the council-board and in the administration of matters there was no room for anybody to propose any remedy for what was amiss, or to compass anything, though never so good for the kingdom, unless approved of by the chancellor; he managing all things with that greatness which now will be removed, that the king may have the benefit of others' advice." Sept. 2, 1667. His own memoirs are full of proofs of this haughtiness and intemperance. He set himself against sir William Coventry, and speaks of a man as able and virtuous as himself with marked aversion. See, too, Life of James, 398. Coventry, according to this writer, 431, was the chief actor in Clarendon's impeachment, but this seems to be a mistake; though he was certainly desirous of getting him out of place.

The king, Clarendon tells us (438), pretended that the anger of parliament was such, and their power too, as it was not in his power to save him. The fallen minister desired him not to fear the power of parliament, "which was more or less, or nothing, as he pleased to make it." So preposterous as well as unconstitutional a way of talking could not but aggravate his unpopularity with that great body he pretended to contemn.

[k] State Trials, vi. 318 Parl. Hist.

year 1665, had projected an insurrection, the latter soliciting Louis XIV. and the pensionary of Holland for aid.[m] Many officers of the old army, Wildman, Creed, and others, suspected, perhaps justly, of such conspiracies, had been illegally detained in prison for several years, and only recovered their liberty on Clarendon's dismissal.[n] He had too much encouraged the hateful race of informers, though he admits that it had grown a trade by which men got money, and that many were committed on slight grounds.[o] Thus colonel Hutchinson died in the close confinement of a remote prison, far more probably on account of his share in the death of Charles I., from which the act of indemnity had discharged him, than any just pretext of treason.[p] It was difficult to obtain a habeas corpus from some of the judges in this reign. But to elude that provision by removing men out of the kingdom was such an offence against the constitution as may be thought enough to justify the impeachment of any minister.

2. The first article, and certainly the most momentous, asserts, "That the earl of Clarendon hath designed a standing army to be raised, and to govern the kingdom thereby, and advised the king to dissolve this present parliament, to lay aside all thoughts of parliaments for the future, to govern by a military power, and to maintain the same by free quarter and contribution." This was prodigiously exaggerated; yet there was some foundation for a part of it. In the disastrous summer of 1667, when the Dutch fleet had insulted our coasts and burned our ships in the Medway, the exchequer being empty, it was proposed in council to call together immediately the parliament, which then stood prorogued to a day at the distance of some months. Clarendon, who feared the hostility of the house of commons towards himself, and had pressed the king to dissolve it, maintained that they could not legally be summoned before the day

[m] Ludlow, iii. 118, 165, et post. Clarendon's Life, 290. Burnet, 226. Œuvres de Louis XIV. ii. 204.

[n] Harris's Lives, v. 28. Biogr. Brit. art. HARRINGTON. Life of James, 396. Somers Tracts, vii. 530, 534.

[o] See Kennet's Register, 757; Ralph, 78, et post; Harris's Lives, v. 182, for the proofs of this.

[p] Mem. of Hutchinson, 303. It seems, however, that he was suspected of some concern with an intended rising in 1663, though nothing was proved against him. Miscellanea Aulica, 319.

fixed; and, with a strange inconsistency, attaching more importance to the formalities of law than to its essence, advised that the counties where the troops were quartered should be called upon to send in provisions, and those where there were no troops to contribute money, which should be abated out of the next taxes. And he admits that he might have used the expression of raising contributions, as in the late civil war. This unguarded and unwarrantable language, thrown out at the council-table where some of his enemies were sitting, soon reached the ears of the commons, and, mingled up with the usual misrepresentations of faction, was magnified into a charge of high treason.[q]

3. The eleventh article charged lord Clarendon with having advised and effected the sale of Dunkirk to the French king, being part of his majesty's dominions, for no greater value than the ammunition, artillery, and stores were worth. The latter part is generally asserted to be false. The sum received is deemed the utmost that Louis would have given, who thought he had made a close bargain. But it is very difficult to reconcile what Clarendon asserts in his defence, and much more at length in his Life (that the business of Dunkirk was entirely decided, before he had anything to do in it, by the advice of Albemarle and Sandwich), with the letters of d'Estrades, the negotiator in this transaction on the part of France. In these letters, written at the time of Louis XIV., Clarendon certainly appears not only as the person chiefly concerned, but as representing himself almost the only one of the council favourable to the measure, and having to overcome the decided repugnance of Southampton, Sandwich, and Albemarle.[r] I cannot indeed see any

Sale of Dunkirk.

[q] Life of Clarendon, 424. Pepys says the parliament was called together "against the duke of York's mind flatly, who did rather advise the king to raise money as he pleased; and against the chancellor, who told the king that queen Elizabeth did do all her business in 1588 without calling a parliament, and so might he do for anything he saw." June 25, 1667. He probably got this from his friend sir W. Coventry

[r] Ralph, 78, &c. The overture came from Clarendon, the French having no expectation of it. The worst was that, just before, he had dwelt in a speech to parliament on the importance of Dunkirk. This was on May 19, 1662. It appears by Louis XIV.'s own account, which certainly does not tally with some other authorities, that Dunkirk had been so great an object with Cromwell, that it was the stipulated price of the English

other explanation than that he magnified the obstacles in the way of this treaty, in order to obtain better terms; a management not very unusual in diplomatical dealing, but, in the degree at least to which he carried it, scarcely reconcilable with the good faith we should expect from this minister. For the transaction itself, we can hardly deem it honourable or politic. The expense of keeping up Dunkirk, though not trifling, would have been willingly defrayed by parliament; and could not well be pleaded by a government which had just encumbered itself with the useless burthen of Tangier. That its possession was of no great direct value to England must be confessed; but it was another question whether it ought to have been surrendered into the hands of France.

4. This close connexion with France is indeed a great reproach to Clarendon's policy, and was the spring of mischiefs to which he contributed, and which he ought to have foreseen. What were the motives of these strong professions of attachment to the interests of Louis XIV. which he makes in some of his letters it is difficult to say, since he had undoubtedly an ancient prejudice against that nation and its government. I should incline to conjecture that his knowledge of the king's unsoundness in religion led him to keep at a distance from the court of Spain, as being far more zealous in its popery, and more connected with the Jesuit faction, than that of France; and this possibly influenced him also with respect to the Portuguese match, wherein, though not the first adviser, he certainly took much interest; an

alliance. Louis, however, was vexed at this, and determined to recover it at any price: il est certain que je ne pouvois trop donner pour racheter Dunkerque. He sent d'Estrades accordingly to England in 1661, directing him to make this his great object. Charles told the ambassador that Spain had made him great offers, but he would rather treat with France. Louis was delighted at this; and though the sum asked was considerable, 5,000,000 livres, he would not break off, but finally concluded the treaty for 4,000,000, payable in three years; nay, saved 500,000 without its being found out by the English, for, a banker having offered them prompt payment at this discount, they gladly accepted it; but this banker was a person employed by Louis himself, who had the money ready. He had the greatest anxiety about this affair; for the city of London deputed the lord mayor to offer any sum so that Dunkirk might not be alienated. Œuvres de Louis XIV. i. 167. If this be altogether correct, the king of France did not fancy he had made so bad a bargain; and indeed, with his projects, if he had the money to spare, he could not think so. Compare the Mémoires d'Estrades, and the supplement to the third volume of Clarendon State Papers. The historians are of no value, except as they copy from some of these original testimonies

alliance as little judicious in the outset as it proved eventually fortunate.[s] But the capital misdemeanor that he committed in this relation with France was the clandestine solicitation of pecuniary aid for the king. He first taught a lavish prince to seek the wages of dependence in a foreign power, to elude the control of parliament by the help of French money.[t] The purpose for which this aid was asked, the succour of Portugal, might be fair and laudable; but the precedent was most base, dangerous, and abominable. A king who had once tasted the sweets of dishonest and clandestine lucre would, in the words of the poet, be no more capable afterwards of abstaining from it than a dog from his greasy offal.

Solicitation of French money.

These are the errors of Clarendon's political life; which, besides his notorious concurrence in all measures of severity and restraint towards the nonconformists, tend to diminish our respect for his memory, and to exclude his name from that list of great and wise ministers where some are willing to place him near the head. If I may seem to my readers less favourable to so eminent a person than common history might warrant, it is at least to be said that I have formed my decision from his own recorded sentiments, or from equally undisputable sources of authority. The publication of his Life, that is, of the history of his administration, has not contributed to his honour. We find in it little or nothing of that attachment to the constitution for which he had acquired credit, and some things which we must struggle hard to reconcile with his veracity, even if the suppression of truth is not to be reckoned an impeachment of it in an historian.[u] But

Clarendon's faults as a minister.

[s] Life of Clar. 78. Life of James, 393.

[t] See supplement to third volume of Clarendon State Papers for abundant evidence of the close connexion between the courts of France and England. The former offered bribes to lord Clarendon so frequently and unceremoniously, that one is disposed to think he did not show so much indignation at the first overture as he ought to have done. See p. 1, 4, 13. The aim of Louis was to effect the match with Catherine. Spain would have given a great portion with any protestant princess, in order to break it. Clarendon asked, on his master's account, for 50,000*l.* to avoid application to parliament: p. 4. The French offered a secret loan, or subsidy perhaps, of 2,000,000 livres for the succour of Portugal. This was accepted by Clarendon—p. 15; but I do not find anything more about it.

[u] As no one who regards with attachment the present system of the English constitution can look upon lord Clarendon as an excellent minister, or a friend to the soundest principles of civil and religi-

the manifest profligacy of those who contributed most to his ruin, and the measures which the court took soon afterwards, have rendered his administration comparatively honourable, and attached veneration to his memory. We are unwilling to believe that there was anything to censure in a minister whom Buckingham persecuted, and against whom Arlington intrigued.*

ous liberty, so no man whatever can avoid considering his incessant deviations from the great duties of an historian as a moral blemish in his character. He dares very frequently to say what is not true, and what he must have known to be otherwise; he does not dare to say what is true. And it is almost an aggravation of this reproach that he aimed to deceive posterity, and poisoned at the fountain a stream from which another generation was to drink. No defence has ever been set up for the fidelity of Clarendon's History; nor can men who have sifted the authentic materials entertain much difference of judgment in this respect; though, as a monument of powerful ability and impressive eloquence, it will always be read with that delight which we receive from many great historians, especially the ancient, independent of any confidence in their veracity.

One more instance, before we quit lord Clarendon for ever, may here be mentioned of his disregard for truth. The strange tale of a fruitless search after the restoration for the body of Charles I. is well known. Lords Southampton and Lindsey, he tells us, who had assisted at their master's obsequies in St. George's chapel at Windsor, were so overcome with grief that they could not recognise the place of interment; and after several vain attempts the search was abandoned in despair. Hist. of Rebellion, vi. 244. Whatever motive the noble historian may have had for this story, it is absolutely incredible that any such ineffectual search was ever made. Nothing could have been more easy than to have taken up the pavement of the choir. But this was unnecessary. Some at least of the workmen employed must have remembered the place of the vault. Nor did it depend on them; for sir Thomas Herbert, who was present, had made at the time a note of the spot, "just opposite the eleventh stall on the king's side." Herbert's Memoirs, 142. And we find from Pepys's Diary, Feb. 26, 1666, that "he was shown at Windsor where the late king was buried, and king Henry VIII., and my lady Seymour." In which spot, as is well known, the royal body has twice been found, once in the reign of Anne, and again in 1813. It has been sometimes suggested that Charles II., having received a large sum of money from parliament towards his father's funeral, chose to have it believed that the body could not be found. But the vote of 70,000*l.* by the commons for this purpose was on Jan. 30, 1678, long after the pretended search which Clarendon has mentioned. Wren was directed to make a design for a monument, which is in All Souls' College: but no further steps were taken. Ellis's Letters, 1st series, vol. iii. p. 329. It seems very unlikely that the king ever got the money which had been voted, and the next parliaments were not in a temper to repeat the offer.—1845.)

* The tenor of Clarendon's life and writings almost forbids any surmise of pecuniary corruption. Yet this is insinuated by Pepys, on the authority of Evelyn, April 27, and May 16, 1667. But the one was gossiping, though shrewd; and the other feeble, though accomplished. Lord Dartmouth, who lived in the next age, and whose splenetic humour makes him no good witness against anybody, charges him with receiving bribes from the main instruments and promoters of the late troubles, and those who had plundered the royalists, which enabled him to build his great mansion in Piccadilly; asserting that it was full of pictures belonging to families who had been despoiled of them. "And whoever had a mind to see what great families had been plundered during the civil war might find some remains either at Clarendon-house or at Cornbury." Note on Burnet, 88.

The

An eminent characteristic of Clarendon had been his firmness, called indeed by most pride and obstinacy, which no circumstances, no perils, seemed likely to bend. But his spirit sunk all at once with his fortune. Clinging too long to office, and cheating himself against all probability with a hope of his master's kindness when he had lost his confidence, he forgot that dignified philosophy which ennobles a voluntary retirement, that stern courage which innocence ought to inspire; and, hearkening to the king's treacherous counsels, fled before his enemies into a foreign country. Though the impeachment, at least in the point of high treason, cannot be defended, it is impossible to deny that the act of banishment, under the circumstances of his flight, was capable, in the main, of full justification. In an ordinary criminal suit, a process of outlawry goes against the accused who flies from justice; and his neglect to appear within a given time is equivalent, in cases of treason or felony, to a conviction of the offence; can it be complained of, that a minister of state, who dares not confront a parliamentary impeachment, should be visited with an analogous penalty? But, whatever injustice and violence may be found in this prosecution, it established for ever the right of impeachment, which the discredit into which the long parliament had fallen exposed to some hazard; the strong abettors of prerogative, such as Clarendon himself, being inclined to dispute this responsibility of the king's advisers to parliament. The commons had, in the preceding session, sent up an impeachment against lord Mordaunt, upon charges of so little public moment, that they may be suspected of having chiefly had in view the assertion of this important privilege.[y] It was never called in question from this time; and indeed they took care during the remainder of this reign that it should not again be endangered by a paucity of precedents.[z]

His pusillanimous flight,

and consequent banishment.

The character of Clarendon as a minister is fairly and judiciously drawn by Macpherson, Hist. of England, 98; a work by no means so full of a tory spirit as has been supposed.

[y] Parl. Hist. 347.

[z] The lords refused to commit the earl of Clarendon on a general impeachment of high treason; and, in a conference with the lower house, denied the authority of the precedent in Strafford's case, which was pressed upon them. It is remarkable that the managers of this conference for the commons vindicated the

The period between the fall of Clarendon in 1667 and the commencement of lord Danby's administration in 1673 is generally reckoned one of the most disgraceful in the annals of our monarchy. This was the age of what is usually denominated the Cabal administration, from the five initial letters of sir Thomas Clifford, first commissioner of the treasury, afterwards lord Clifford and high treasurer; the earl of Arlington, secretary of state; the duke of Buckingham; lord Ashley, chancellor of the exchequer, afterwards earl of Shaftesbury and lord chancellor; and, lastly, the duke of Lauderdale. Yet, though the counsels of these persons soon became extremely pernicious and dishonourable, it must be admitted that the first measures after the banishment of Clarendon, both in domestic and foreign policy, were highly praiseworthy. Bridgeman, who succeeded the late chancellor in the custody of the great seal, with the assistance of chief baron Hale and bishop Wilkins, and at the instigation of Buckingham, who, careless about every religion,

Cabal ministry.

Scheme of comprehension and indulgence.

first proceedings of the long parliament, which shows a considerable change in their tone since 1661. They do not, however, seem to have urged—what is an apparent distinction between the two precedents—that the commitment of Strafford was on a verbal request of Pym in the name of the commons, without alleging any special matter of treason, and consequently irregular and illegal; while the 16th article of Clarendon's impeachment charges him with betraying the king's counsels to his enemies; which, however untrue, evidently amounted to treason within the statute of Edward III.; so that the objection of the lords extended to committing any one for treason upon impeachment without all the particularity required in an indictment. This showed a very commendable regard to the liberty of the subject; and from this time we do not find the vague and unintelligible accusations, whether of treason or misdemeanour, so usual in former proceedings of parliament. Parl. Hist. 387. A protest was signed by Buckingham, Albemarle, Bristol, Arlington, and others of their party, including three bishops (Cosins, Croft, and another), against the refusal of their house to commit Clarendon upon the general charge. A few, on the other hand, of whom Hollis is the only remarkable name, protested against the bill of banishment.

"The most fatal blow" (says James) "the king gave himself to his power and prerogative was when he sought aid from the house of commons to destroy the earl of Clarendon: by that he put that house again in mind of their impeaching privilege, which had been wrested out of their hands by the restoration; and when ministers found they were like to be left to the censure of parliament, it made them have a greater attention to court an interest there than to pursue that of their princes, from whom they hoped not for so sure a support." Life of James, 593.

The king, it is said, came rather slowly into the measure of impeachment; but became afterwards so eager as to give the attorney-general, Finch, positive orders to be active in it, observing him to be silent. Carte's Ormond, ii. 353. Buckingham had made the king great promises of what the commons would do, in case he would sacrifice Clarendon.

was from humanity or politic motives friendly to the indulgence of all, laid the foundations of a treaty with the nonconformists, on the basis of a comprehension for the presbyterians, and a toleration for the rest.[a] They had nearly come, it is said, to terms of agreement, so that it was thought time to intimate their design in a speech from the throne. But the spirit of 1662 was still too powerful in the commons; and the friends of Clarendon, whose administration this change of counsels seemed to reproach, taking a warm part against all indulgence, a motion, that the king be desired to send for such persons as he should think fit to make proposals to him in order to the uniting of his protestant subjects, was negatived by 176 to 70.[b] They proceeded, by almost an equal majority, to continue the bill of 1664, for suppressing seditious conventicles; which failed, however, for the present, in consequence of the sudden prorogation.[c]

But whatever difference of opinion might at that time prevail with respect to this tolerant disposition of the new government, there was none as to their great measure in external policy, the triple alliance with Holland and Sweden. A considerable and pretty sudden change had taken place in the temper of the English people towards France. Though the discordance of national character, and the dislike that seems natural to neighbours, as well as in some measure the recollections of their ancient hostility, had at all times kept up a certain ill will between the two, it is manifest that before the reign of Charles II. there was not that antipathy and inveterate enmity towards the French in

Triple alliance.

[a] Kennet, 293, 300. Burnet. Baxter, 23. The design was to act on the principle of the declaration of 1600, so that presbyterian ordinations should pass sub modo. Tillotson and Stillingfleet were concerned in it. The king was at this time exasperated against the bishops for their support of Clarendon. Burnet, ibid. Pepys's Diary, 21st Dec. 1667. And he had also deeper motives.

[b] Parl. Hist. 421. Ralph, 170. Carte's Life of Ormond, ii. 362. Sir Thomas Littleton spoke in favour of the comprehension, as did Seymour and Waller; all of them enemies of Clarendon, and probably connected with the Buckingham faction: but the church party was much too strong for them. Pepys says the commons were furious against the project; it was said that whoever proposed new laws about religion must do it with a rope about his neck. Jan. 10, 1668. This is the first instance of a triumph obtained by the church over the crown in the house of commons. Ralph observes upon it, "It is not for nought that the words church and state are so often coupled together, and that the first has so insolently usurped the precedency of the last."

[c] Parl. Hist. 422.

general which it has since been deemed an act of patriotism to profess. The national prejudices, from the accession of Elizabeth to the restoration, ran far more against Spain; and it is not surprising that the apprehensions of that ambitious monarchy, which had been very just in the age of Philip II., should have lasted longer than its ability or inclination to molest us. But the rapid declension of Spain after the peace of the Pyrenees, and the towering ambition of Louis XIV., master of a kingdom intrinsically so much more formidable than its rival, manifested that the balance of power in Europe, and our own immediate security, demanded a steady opposition to the aggrandisement of one monarchy, and a regard to the preservation of the other. These indeed were rather considerations for statesmen than for the people; but Louis was become unpopular, both by his acquisition of Dunkirk at the expense, as it was thought, of our honour, and much more deservedly by his shuffling conduct in the Dutch war, and union in it with our adversaries. Nothing, therefore, gave greater satisfaction in England than the triple alliance, and consequent peace of Aix la Chapelle, which saved the Spanish Netherlands from absolute conquest, though not without important sacrifices.[d]

Intrigue with France.

Charles himself meanwhile by no means partook in this common jealousy of France. He had, from the time of his restoration, entered into close relations with that power, which a short period of hostility had interrupted without leaving any resentment in his mind. It is now known that, while his minister was negotiating at the Hague for the triple alliance, he had made overtures for a clandestine treaty with Louis, through his sister the duchess of Orleans, the Duke of Buckingham, and the French Ambassador Rouvigny.[e] As the king of France was at first backward

[d] France retained Lille, Tournay, Douay, Charlerol, and other places by the treaty. The allies were surprised, and not pleased, at the choice Spain made of yielding these towns in order to save Franche Comté. Temple's Letters, 97. In fact, they were not on good terms with that power; she had even a project, out of spite to Holland, of giving up the Netherlands entirely to France, in exchange for Rousillon, but thought better of it on cooler reflection.

[e] Dalrymple, ii. 5, et post. Temple was not treated very favourably by most of the ministers on his return from concluding the triple alliance: Clifford said to a friend, "Well, for all this noise, we must yet have another war with the Dutch before it be long." Temple's Letters, 123.

in meeting these advances, and the letters published in regard to them are very few, we do not find any precise object expressed beyond a close and intimate friendship. But a few words in a memorial of Rouvigny to Louis XIV. seem to let us into the secret of the real purpose. "The duke of York," he says, "wishes much for this union; the duke of Buckingham the same: they use no art, but say that nothing else can re-establish the affairs of this court."[f]

King's desire to be absolute.

Charles II. was not of a temperament to desire arbitrary power, either through haughtiness and conceit of his station, which he did not greatly display, or through the love of taking into his own hands the direction of public affairs, about which he was in general pretty indifferent. He did not wish, as he told lord Essex, to sit like a Turkish sultan, and sentence men to the bowstring, but could not bear that a set of fellows should inquire into his conduct.[g] His aim, in fact, was liberty rather than power; it was that immunity from control and censure in which men of his character place a great part of their happiness. For some years he had cared probably very little about enhancing his prerogative, content with the loyalty, though not quite with the liberality, of his parliament. And had he not been drawn, against his better judgment, into the war with Holland, this harmony might perhaps have been protracted a good deal longer. But the vast expenditure of that war, producing little or no decisive success, and coming unfortunately at a time when trade was not very thriving, and when rents had considerably fallen, exasperated all men against the prodigality of the court, to which they might justly ascribe part of their burthens, and, with the usual miscalculations, believed that much more of them was due. Hence the bill appointing commissioners of public account, so ungrateful to the king, whose personal reputation it was likely to affect, and whose favourite excesses it might tend to restrain.

He was almost equally provoked by the licence of his people's tongues. A court like that of Charles is the natural topic of the idle, as well as the censorious. An

[f] Dalrymple, ii. 12. [g] Burnet.

administration so ill conducted could not escape the remarks of a well-conducted and intelligent city. There was one method of putting an end to these impertinent comments, or of rendering them innoxious; but it was the last which he would have adopted. Clarendon informs us that, the king one day complaining of the freedom, as to political conversation, taken in coffee-houses, he recommended either that all persons should be forbidden by proclamation to resort to them, or that spies should be placed in them to give information against seditious speakers.[h] The king, he says, liked both expedients, but thought it unfair to have recourse to the latter till the former had given fair warning, and directed him to propose it to the council; but here, sir William Coventry objecting, the king was induced to abandon the measure, much to Clarendon's disappointment, though it probably saved him an additional article in his impeachment. The unconstitutional and arbitrary tenor of this great minister's notions of government is strongly displayed in this little anecdote. Coventry was an enlightened and, for that age, an upright man, whose enmity Clarendon brought on himself by a marked jealousy of his abilities in council.

Those who stood nearest to the king were not backward to imitate his discontent at the privileges of his people and their representatives. The language of courtiers and court ladies is always intolerable to honest men, especially that of such courtiers as surrounded the throne of Charles II. It is worst of all amidst public calamities, such as pressed very closely on one another in a part of his reign—the awful pestilence of 1665, the still more ruinous fire of 1666, the fleet burned by the Dutch in the Medway next summer. No one could reproach the king for outward inactivity or indifference during the great fire. But there were some, as Clarendon tells us, who presumed to assure him "that this was the greatest blessing that God had ever conferred on him, his restoration only excepted; for the walls and gates being now burned and thrown down of that rebellious city, which was always an enemy to the crown, his majesty would never suffer them to repair and build

[h] Life of Clarendon, 357.

them up again, to be a bit in his mouth and a bridle upon his neck; but would keep all open, that his troops might enter upon them whenever he thought it necessary for his service, there being no other way to govern that rude multitude but by force."[1] This kind of discourse, he goes on to say, did not please the king. But here we may venture to doubt his testimony; or, if the natural good temper of Charles prevented him from taking pleasure in such atrocious congratulations, we may be sure that he was not sorry to think the city more in his power.

It seems probable that this loose and profligate way of speaking gave rise, in a great degree, to the suspicion that the city had been purposely burned by those who were more enemies to religion and liberty than to the court. The papists stood ready to bear the infamy of every unproved crime; and a committee of the house of commons collected evidence enough for those who were already convinced that London had been burned by that obnoxious sect. Though the house did not proceed farther, there can be no doubt that the inquiry contributed to produce that inveterate distrust of the court, whose connexions with the popish faction were half known, half conjectured, which gave from this time an entirely new complexion to the parliament. Prejudiced as the commons were, they could hardly have imagined the catholics to have burned the city out of mere malevolence; but must have attributed the crime to some far-spreading plan of subverting the established constitution.[k]

The retention of the king's guards had excited some jealousy, though no complaints seem to have been made

[1] Life of Clarendon, 355.

[k] State Trials, vi. 807. One of the oddest things connected with this fire was, that some persons of the fanatic party had been hanged in April, for a conspiracy to surprise the Tower, murder the duke of Albemarle and others, and then declare for an equal division of lands, &c. In order to effect this, the city was to be fired, and the guards secured in their quarters; and for this the 3rd of September following was fixed upon as a lucky day. This is undoubtedly to be read in the London Gazette for April 30, 1666; and it is equally certain that the city was in flames on the 3rd of September. But, though the coincidence is curious, it would be very weak to think it more than a coincidence, for the same reason as applies to the suspicion which the catholics incurred—that the mere destruction of the city could not have been the object of any party, and that nothing was attempted to manifest any further design.

of it in parliament; but the sudden levy of a considerable force in 1667, however founded upon a very plausible pretext from the circumstances of the war, lending credit to these dark surmises of the court's sinister designs, gave much greater alarm. The commons, summoned together in July, instantly addressed the king to disband his army as soon as the peace should be made. We learn from the duke of York's private memoirs, that some of those who were most respected for their ancient attachment to liberty, deemed it in jeopardy at this crisis. The earls of Northumberland and Leicester, lord Hollis, Mr. Pierpoint, and others of the old parliamentary party, met to take measures together. The first of these told the duke of York that the nation would not be satisfied with the removal of the chancellor, unless the guards were disbanded, and several other grievances redressed. The duke bade him be cautious what he said lest he should be obliged to inform the king; but Northumberland replied that it was his intention to repeat the same to the king, which he did accordingly the next day.[m]

This change in public sentiment gave warning to Charles that he could not expect to reign with as little trouble as he had hitherto experienced; and doubtless the recollection of his father's history did not contribute to cherish the love he sometimes pretended for parliaments.[n] His brother, more reflecting, and more impatient of restraint on royal authority, saw with still greater clearness than the king that they could only keep the prerogative at its desired height by means of intimidation. A regular army was indispensable; but to keep up an army in spite of parliament, or to raise

[m] Macpherson's Extracts, 38, 49. Life of James, 426.

[n] ["I am sorry," says Temple, very wisely and virtuously, "his majesty should meet with anything he did not look for at the opening of this session of parliament; but confess I do not see why his majesty should [not] not only consent, but encourage any inquiries or disquisitions they desire to make into the miscarriages of the late war, as well as he had done already in the matter of accounts. For if it be not necessary, it is a king's care and happiness to content his people. I doubt, as men will never part willingly with their money, unless they be well-persuaded it will be employed directly to those ends for which they gave it, so they will never be satisfied with a government, unless they see men are chosen into offices and employments by being fit for them, continued for discharging them well, rewarded for extraordinary merit, and punished for remarkable faults." March 2, 1668. Courtenay's Life of Temple, vol. ii. p. 90.—1845.]

money for its support without parliament, was a very difficult undertaking. It seemed necessary to call in a more powerful arm than their own; and, by establishing the closest union with the king of France, to obtain either military or pecuniary succours from him, as circumstances might demand. But there was another and not less imperious motive for a secret treaty. The king, as has been said, though little likely, from the tenor of his life, to feel very strong and lasting impressions of religion, had at times a desire to testify publicly his adherence to the Romish communion. The duke of York had come more gradually to change the faith in which he was educated. He describes it as the result of patient and anxious inquiry; nor would it be possible therefore to fix a precise date for his conversion, which seems to have been not fully accomplished till after the restoration.° He however continued in conformity to the church of England, till, on discovering that the catholic religion exacted an outward communion, which he had fancied not indispensable, he became more uneasy at the restraint that policy imposed on him. This led to a conversation with the king, of whose private opinions and disposition to declare them he was probably informed, and to a close union with Clifford and Arlington, from whom he had stood aloof on account of their animosity against Clarendon. The king and duke held a consultation with those two ministers, and with lord Arundel of Wardour, on the 25th of January, 1669, to discuss the ways and methods fit to be taken for the advancement of the catholic religion in these kingdoms. The king spoke earnestly, and with tears in his eyes.

° He tells us himself that it began by his reading a book written by a learned bishop of the church of England to clear her from schism in leaving the Roman communion, which had a contrary effect on him; especially when, at the said bishop's desire, he read an answer to it. This made him inquisitive about the grounds and manner of the Reformation. *After his return*, Heylin's History of the Reformation, and the preface to Hooker's Ecclesiastical Polity, thoroughly convinced him that neither the church of England, nor Calvin, nor any of the reformers, had power to do what they did; and he was confident, he said, that whosoever reads those two books, with attention and without prejudice, would be of the same opinion. Life of James, i. 629. The duchess of York embraced the same creed as her husband, and, as he tells us, without knowledge of his sentiments, but one year before her death in 1670. She left a paper at her death, containing the reasons for her change. See it in Kennet, 320. It is plain that she, as well as the duke, had been influenced by the Romanizing tendency of some Anglican divines.

After a long deliberation it was agreed that there was no better way to accomplish this purpose than through France, the house of Austria being in no condition to give any assistance.[p]

Secret treaty of 1670.

The famous secret treaty, which, though believed on pretty good evidence not long after the time, was first actually brought to light by Dalrymple about half a century since, began to be negotiated very soon after this consultation.[q] We find allusions to the king's projects in one of his letters to the duchess of Orleans, dated 22nd March, 1669.[r]

Its objects.

In another, of June 6, the methods he was adopting to secure himself in this perilous juncture appear. He was to fortify Plymouth, Hull, and Portsmouth, and to place them in trusty hands. The fleet was under the duke, as lord admiral; the guards and their officers were thought in general well affected;[s] but his great reliance was on the most christian king. He stipulated for 200,000*l.* annually, and for the aid of 6000 French troops.[t] In return for such important

[p] Macpherson, 50. Life of James, 414.

[q] De Witt was apprised of the intrigue between France and England as early as April, 1669, through a Swedish agent at Paris. Temple, 179. Temple himself, in the course of that year, became convinced that the king's views were not those of his people, and reflects severely on his conduct in a letter, December 24, 1669, p. 206. In September, 1670, on his sudden recall from the Hague, De Witt told him his suspicions of a clandestine treaty: 241. He was received on his return coldly by Arlington, and almost with rudeness by Clifford: 244. They knew he would never concur in the new projects. But in 1682, during one of the intervals when Charles was playing false with his brother Louis, the latter, in revenge, let an abbé Primi, in a history of the Dutch war, publish an account of the whole secret treaty, under the name of Count de St. Majolo. This book was immediately suppressed at the instance of the English ambassador; and Primi was sent for a short time to the Bastile. But a pamphlet, published in London, just after the revolution, contains extracts from it. Dalrymple, ii. 80. Somers Tracts, viii. 13. State Tracts, temp. W. III., vol. i. p. 1. Harl. Misc., ii. 387. Œuvres de Louis XIV., vi. 476. It is singular that Hume should have slighted so well-authenticated a fact, even before Dalrymple's publication of the treaty; but I suppose he had never heard of Primi's book. [Yet it had been quoted by Bolingbroke, Dissertation on Parties, Letter iv., who alludes also to "other proofs, which have not seen the light." And, in the 'Letters on the Study of History,' Lett. vii., he is rather more explicit about "the private relations I have read formerly, drawn up by those who were no enemies to such designs, and on the authority of those who were parties to them."] The original treaty has lately been published by Dr. Lingard, from lord Clifford's cabinet. [Dalrymple had only given a rough draught from the depôt at Versailles, drawn by sir Richard Bealing for the French court. The variations are not very material.]

[r] Dalrymple, ii. 22.

[s] Dalrymple, 23. Life of James, 442.

[t] The tenor of the article leads me to conclude that these troops were to be landed in England at all events, in order to secure the public tranquillity, without waiting for any disturbance.

succour, Charles undertook to serve his ally's ambition and wounded pride against the United Provinces. These, when conquered by the French arms, with the co-operation of an English navy, were already shared by the royal conspirators. A part of Zealand fell to the lot of England, the remainder of the Seven Provinces to France, with an understanding that some compensation should be made to the prince of Orange. In the event of any new rights to the Spanish monarchy accruing to the most Christian king, as it is worded (that is, on the death of the king of Spain, a sickly child), it was agreed that England should assist him with all her force by sea and land, but at his own expense; and should obtain not only Ostend and Minorca, but, as far as the king of France could contribute to it, such parts of Spanish America as she should choose to conquer.[u] So strange a scheme of partitioning that vast inheritance was never, I believe, suspected till the publication of the treaty, though Bolingbroke had alluded to a previous treaty of partition between Louis and the emperor Leopold, the complete discovery of which has been but lately made.[x]

Each conspirator, in his coalition against the protestant faith and liberties of Europe, had splendid objects in view; but those of Louis seemed by far the more probable of the two and less liable to be defeated. The full completion of their scheme would have reunited a great kingdom to the

Differences between Charles and Louis as to the mode of its execution.

[u] P. 49.

[x] Bolingbroke has a remarkable passage as to this in his Letters on History (Letter vii.): it may be also alluded to by others. The full details, however, as well as more authentic proofs, were reserved, as I believe, for the publication of Œuvres de Louis XIV., where they will be found in vol. ii. 403. The proposal of Louis to the emperor, in 1667, was, that France should have the Pays Bas, Franche Comté, Milan, Naples, the ports of Tuscany, Navarre, and the Philippine Islands: Leopold taking all the rest. The obvious drift of this was, that France should put herself in possession of an enormous increase of power and territory, leaving Leopold to fight as he could for Spain and America; which were not likely to submit peaceably. The Austrian cabinet understood this; and proposed that they should exchange their shares. Finally, however, it was concluded on the king's terms, except that he was to take Sicily instead of Milan. One article of this treaty was, that Louis should keep what he had conquered in Flanders; in other words, the terms of the treaty of Aix la Chapelle. The ratifications were exchanged 29th Feb. 1668. Louis represents himself as more induced by this prospect than by any fear of the triple alliance, of which he speaks slightingly, to conclude the peace of Aix la Chapelle. He thought that he should acquire a character for moderation which might be serviceable to him "dans les grands accroissemens que ma fortune pourroit recevoir." Vol. ii. p. 369.

catholic religion, and turned a powerful neighbour into a dependent pensioner. But should this fail (and Louis was too sagacious not to discern the chances of failure), he had pledged to him the assistance of an ally in subjugating the republic of Holland, which, according to all human calculation, could not withstand their united efforts; nay, even in those ulterior projects which his restless and sanguine ambition had ever in view, and the success of which would have realised, not indeed the chimera of an universal monarchy, but a supremacy and dictatorship over Europe. Charles, on the other hand, besides that he had no other return to make for the necessary protection of France, was impelled by a personal hatred of the Dutch, and by the consciousness that their commonwealth was the standing reproach of arbitrary power, to join readily in the plan for its subversion. But, looking first to his own objects, and perhaps a little distrustful of his ally, he pressed that his profession of the Roman catholic religion should be the first measure in prosecution of the treaty; and that he should immediately receive the stipulated 200,000*l.*, or at least a part of the money. Louis insisted that the declaration of war against Holland should precede. This difference occasioned a considerable delay; and it was chiefly with a view of bringing round her brother on this point that the duchess of Orleans took her famous journey to Dover in the spring of 1670. Yet, notwithstanding her influence, which passed for irresistible, he persisted in adhering to the right reserved to him in the draft of the treaty of choosing his own time for the declaration of his religion: and it was concluded on this footing at Dover, by Clifford, Arundel, and Arlington, on the 22nd of May, 1670, during the visit of the duchess of Orleans.[r]

[r] Dalrymple, 31-57. James gives a different account of this; and intimates that Henrietta, whose visit to Dover he had for this reason been much against, prevailed on the king to change his resolution, and to begin with the war. He gained over Arlington and Clifford. The duke told them it would quite defeat the catholic design, because the king must run in debt, and be at the mercy of his parliament. They answered that, if the war succeeded, it was not much matter what people suspected. P. 450. This shows that they looked on force as necessary to compass the design, and that the noble resistance of the Dutch, under the prince of Orange, was that which frustrated the whole conspiracy. "The duke," it is again said, p. 453, "was in his own judgment against entering into this war before his majesty's power and authority in England had been better fixed and less precarious, as it would have been if the private treaty first

A mutual distrust, however, retarded the further progress of this scheme, one party unwilling to commit himself till he should receive money, the other too cautious to run the risk of throwing it away. There can be no question but that the king of France was right in urging the conquest of Holland as a preliminary of the more delicate business they were to manage in England; and, from Charles's subsequent behaviour, as well as his general fickleness and love of ease, there seems reason to believe that he would gladly have receded from an undertaking of which he must every day have more strongly perceived the difficulties. He confessed, in fact, to Louis's ambassador, that he was almost the only man in his kingdom who liked a French alliance.[z] The change of religion, on a nearer view, appeared dangerous for himself and impracticable as a national measure. He had not dared to intrust any of his protestant ministers, even Buckingham, whose indifference in such points was notorious, with this great secret; and, to keep them the better in the dark, a mock negotiation was set on foot with France, and a pretended treaty actually signed, the exact counterpart of the other except as to religion. Buckingham, Shaftesbury, and Lauderdale were concerned in this simulated treaty, the negotiation for which did not commence till after the original convention had been signed at Dover.[a]

The court of France, having yielded to Charles the point about which he had seemed so anxious, had soon the mortification to discover that he would take no steps to effect it. They now urged that immediate declaration

agreed on had not been altered." The French court, however, was evidently right in thinking that, till the conquest of Holland should be achieved, the declaration of the king's religion would only weaken him at home. It is gratifying to find the heroic character of our glorious deliverer displaying itself among these foul conspiracies. The prince of Orange came over to England in 1670. He was then very young; and his uncle, who was really attached to him, would have gladly associated him in the design; indeed it had been agreed that he was to possess part of the United Provinces in sovereignty. But Colbert writes that the king had found him so zealous a Dutchman and protestant, that he could not trust him with any part of the secret. He let him know, however, as we learn from Burnet, 382, that he had himself embraced the Romish faith.

[z] Dalrymple, 57.

[a] P. 68. Life of James, 444. In this work it is said that even the duchess of Orleans had no knowledge of the real treaty; and that the other originated with Buckingham. But Dalrymple's authority seems far better in this instance.

of his religion which they had for very wise reasons not long before dissuaded. The king of England hung back, and tried so many excuses that they had reason to suspect his sincerity; not that in fact he had played a feigned part from the beginning, but, his zeal for popery having given way to the seductions of a voluptuous and indolent life, he had been led, with the good sense he naturally possessed, to form a better estimate of his resources and of the opposition he must encounter. Meanwhile the eagerness of his ministers had plunged the nation into war with Holland, and Louis, having attained his principal end, ceased to trouble the king on the subject of religion. He received large sums from France during the Dutch war.[b]

This memorable transaction explains and justifies the strenuous opposition made in parliament to the king and duke of York, and may be reckoned the first act of a drama which ended in the revolution. It is true that the precise terms of this treaty were not authentically known: but there can be no doubt that those who from this time displayed an insuperable jealousy of one brother, and a determined enmity to the other, had proofs enough for moral conviction of their deep conspiracy with France against religion and liberty. This suspicion is implied in all the conduct of that parliamentary opposition, and is the apology of much that seems violence and faction, especially in the business of the popish plot and the bill of exclusion. It is of importance also to observe that James II. was not misled and betrayed by false or foolish counsellors, as some would suggest, in his endeavours to subvert the laws, but acted on a plan long since concerted and in which he had taken a principal share.

It must be admitted that neither in the treaty itself, nor in the few letters which have been published by Dalrymple, do we find any explicit declaration either that the catholic religion was to be established as the national church or arbitrary power introduced in England. But there are not wanting strong presumptions of this design. The king speaks, in a letter to his sister, of finding means to put the proprietors of church lands

[b] Dalrymple, 84, &c.

out of apprehension.[c] He uses the expression, "rétablir la religion catholique;" which, though not quite unequivocal, seems to convey more than a bare toleration or a personal profession by the sovereign.[d] He talks of a negotiation with the court of Rome to obtain the permission of having mass in the vulgar tongue and communion in both kinds as terms that would render his conversion agreeable to his subjects.[e] He tells the French ambassador that not only his conscience, but the confusion he saw every day increasing in his kingdom to the diminution of his authority, impelled him to declare himself a catholic; which, besides the spiritual advantage, he believed to be the only means of restoring the monarchy.[f] These passages, as well as the precautions taken in expectation of a vigorous resistance from a part of the nation, appear to intimate a formal re-establishment of the catholic church; a measure connected, in the king's apprehension, if not strictly with arbitrary power, yet with a very material enhancement of his prerogative. For the profession of an obnoxious faith by the king, as an insulated person, would, instead of strengthening his authority, prove the greatest obstacle to it, as, in the next reign, turned out to be the case. Charles, however, and the duke of York deceived themselves into a confidence that the transition could be effected with no extraordinary difficulty. The king knew the prevailing laxity of religious principles in many about his court, and thought he had reason to rely on others as secretly catholic. Sunderland is mentioned as a young man of talent, inclined to adopt that religion.[g] Even the earl of Orrery is spoken of as a catholic in his heart.[g] The duke, who conversed more among divines, was led to hope, from the strange language of the high-church party, that they might readily be persuaded to make what seemed no long step, and come into easy terms of union.[h] It was the constant

[c] Dalrymple, 23.

[d] P. 52. The reluctance to let the duke of Buckingham into the secret seems to prove that more was meant than a toleration of the Roman catholic religion, towards which he had always been disposed, and which was hardly a secret at court.

[e] Pp. 62, 84. [f] P. 81. [g] P. 33.

[h] "The generality of the church of England men was not at that time very averse to the catholic religion; many that went under that name had their religion to choose, and went to church for company's sake." Life of James p. 442.

policy of the Romish priests to extenuate the differences between the two churches, and to throw the main odium of the schism on the Calvinistic sects. And many of the Anglicans, in their abhorrence of protestant nonconformists, played into the hands of the common enemy.

Fresh severities against dissenters.

The court, however, entertained great hopes from the depressed condition of the dissenters, whom it was intended to bribe with that toleration under a catholic regimen which they could so little expect from the church of England. Hence the duke of York was always strenuous against schemes of comprehension, which would invigorate the protestant interest and promote conciliation. With the opposite view of rendering a union among protestants impracticable, the rigorous episcopalians were encouraged underhand to prosecute the nonconformists.[l] The duke of York took pains to assure Owen, an eminent divine of the independent persuasion, that he looked on all persecution as an unchristian thing, and altogether against his conscience.[k] Yet the court promoted a renewal of the temporary act passed in 1664 against conventicles, which was reinforced by the addition of an extraordinary proviso, "That all clauses in the act should be construed most largely and beneficially for suppressing conventicles, and for the justification and encouragement of all persons to be employed in the execution thereof."[m] Wilkins, the most honest of the bishops, opposed this act in the house of lords, notwithstanding the king's personal request that he would be silent.[n] Sheldon, and others who, like him, disgraced the church of England by their unprincipled policy or their passions, not only gave it their earnest support at the time, but did all in their power to enforce its execution.[o] As the king's temper was naturally tolerant, his co-operation in this

l Life of James, p. 442.

k Macpherson's Extracts, p. 51.

m 22 Car. 2, c. 1. Kennet, p. 306. The zeal in the commons against popery tended to aggravate this persecution of the dissenters. They had been led by some furious clergymen to believe the absurdity that there was a good understanding between the two parties.

n Burnet, p. 272.

Baxter, pp. 74, 86. Kennet, p. 311. See a letter of Sheldon, written at this time, to the bishops of his province, urging them to persecute the nonconformists. Harris's Life of Charles II., p. 106. Proofs also are given by this author of the manner in which some, such as Lamplugh and Ward, responded to their primate's wishes.

Sheldon found a panegyrist quite worthy of him in his chaplain Parker, afterwards bishop of Oxford. This nota-

severe measure would not easily be understood without the explanation that a knowledge of his secret policy enables us to give. In no long course of time the persecution was relaxed, the imprisoned ministers set at liberty, some of the leading dissenters received pensions, and the king's declaration of a general indulgence held forth an asylum from the law under the banner of prerogative.[p] Though this is said to have proceeded from the advice of Shaftesbury, who had no concern in the original secret treaty with France, it was completely in the spirit of that compact, and must have been acceptable to the king.

But the factious, fanatical, republican party (such were the usual epithets of the court at the time, such have ever since been applied by the advocates or apologists of the Stuarts) had gradually led away by their delusions that parliament of cavaliers; or, in other words, the glaring vices of the king, and the manifestation of designs against religion and liberty, had dispossessed them of a confiding loyalty which, though highly dangerous from its excess, had always been rather ardent than servile. The sessions had been short, and the intervals of repeated prorogations much longer than usual: a policy not well calculated for that age, where the growing discontents and suspicions of the people acquired strength by the stoppage of the regular channel of complaint. Yet the house of commons, during this period, though unmanageable on the one point of toleration, had displayed no want of confidence in the king nor any animosity towards his administration; notwithstanding the flagrant abuses in the expenditure which the parliamentary commission of public accounts had brought to light, and the outrageous assault on sir John Coventry, a crime notoriously perpetrated by persons

ble person has left a Latin history of his own time, wherein he largely commemorates the archbishop's zeal in molesting the dissenters, and praises him for defeating the scheme of comprehension. P. 25. I observe, that the late excellent editor of Burnet has endeavoured to slide in a word for the primate (note on vol. i. p. 243), on the authority of that history by bishop Parker, and of Sheldon's Life in the Biographia Britannica. It is lamentable to rest on such proofs. I should certainly not have expected that, in Magdalen college, of all places, the name of Parker would have been held in honour; and as to the Biographia, laudatory as it is of primates in general (save Tillotson whom it depreciates), I find, on reference, that its praise of Sheldon's virtues is grounded on the authority of his epitaph in Croydon church.

[p] Baxter, 87.

employed by the court, and probably by the king's direct order.[q]

Dutch war.

The war with Holland at the beginning of 1672, so repugnant to English interests, so unwarranted by any provocation, so infamously piratical in its commencement, so ominous of further schemes still more dark and dangerous, finally opened the eyes of all men of integrity. It was accompanied by the shutting up of the exchequer, an avowed bankruptcy at the moment of beginning an expensive war,[r] and by the declaration of indulgence, or suspension of all penal laws in religion: an assertion of prerogative which seemed without limit. These exorbitances were the more scandalous that they happened during a very long prorogation. Hence the court so lost the confidence of the house of commons that, with all the lavish corruption of the following period, it could never regain a secure majority on any important question. The superiority of what was called the country party is referred to the session of February, 1673, in which they compelled the king to recall his proclamation suspending the penal laws, and raised a barrier against the encroachments of popery in the test act.

Declaration of indulgence.

The king's declaration of indulgence had been projected by Shaftesbury in order to conciliate or lull to sleep the protestant dissenters. It redounded, in its immediate effect, chiefly to their benefit; the catholics already enjoying a conniv-

[q] This is asserted by Burnet, and seems to be acknowledged by the duke of York. The court endeavoured to mitigate the effect of the bill brought into the commons in consequence of Coventry's injury; and so far succeeded, that, instead of a partial measure of protection for the members of the house of commons, as originally designed, (which seemed, I suppose, to carry too marked a reference to the particular transaction), it was turned into a general act, making it a capital felony to wound with intention to maim or disfigure. But the name of the Coventry act has always clung to this statute. Parl. Hist. 461.

[r] The king promised the bankers interest at six per cent., instead of the money due to them from the exchequer; but this was never paid till the latter part of William's reign. It may be considered as the beginning of our national debt. It seems to have been intended to follow the shutting up of the exchequer with a still more unwarrantable stretch of power, by granting an injunction to the creditors who were suing the bankers at law. According to North (Examen, pp. 38 47), lord-keeper Bridgman, resigned the great seal, rather than comply with this; and Shaftesbury himself, who succeeded him, did not venture, if I understand the passage rightly, to grant an absolute injunction. The promise of interest for their money seems to have been given instead of this more illegal and violent remedy.

ance at the private exercise of their religion, and the declaration expressly refusing them public places of worship. The plan was most laudable in itself, could we separate the motives which prompted it, and the means by which it was pretended to be made effectual. But in the declaration the king says, "We think ourselves obliged to make use of that supreme power in ecclesiastical matters which is not only inherent in us, but hath been declared and recognised to be so by several statutes and acts of parliament." "We do," he says, not long afterwards, "declare our will and pleasure to be, that the execution of all and all manner of penal laws in matters ecclesiastical, against whatsoever sort of nonconformists or recusants, be immediately suspended, and they are hereby suspended." He mentions also his intention to license a certain number of places for the religious worship of nonconforming protestants.[s]

It was generally understood to be an ancient prerogative of the crown to dispense with penal statutes in favour of particular persons, and under certain restrictions. It was undeniable that the king might, by what is called a "noli prosequi," stop any criminal prosecution commenced in his courts, though not an action for the recovery of a pecuniary penalty, which, by many statutes, was given to the common informer. He might, of course, set at liberty, by means of a pardon, any person imprisoned, whether upon conviction or by a magistrate's warrant. Thus the operation of penal statutes in religion might, in a great measure, be rendered ineffectual by an exercise of undisputed prerogatives; and thus, in fact, the catholics had been enabled, since the accession of the house of Stuart, to withstand the crushing severity of the laws. But a pretension, in explicit terms, to suspend a body of statutes, a command to magistrates not to put them in execution, arrogated a sort of absolute power which no benefits of the indulgence itself (had they even been less insidiously offered) could induce a lover of constitutional privileges to endure.[t] Notwithstanding the affected distinction of

[s] Parl. Hist. 515. Kennet, 313.

[t] Bridgman, the lord-keeper, resigned the great seal, according to Burnet, because he would not put it to the declaration of indulgence, and was succeeded by Shaftesbury.

temporal and ecclesiastical matters, it was evident that the king's supremacy was as much capable of being bounded by the legislature in one as in the other, and that every law in the statute-book might be repealed by a similar proclamation. The house of commons voted that the king's prerogative in matters ecclesiastical does not extend to repeal acts of parliament, and addressed the king to recall his declaration. Whether from a desire to protect the nonconformists in a toleration even illegally obtained, or from the influence of Buckingham among some of the leaders of opposition, it appears from the debates that many of those, who had been in general most active against the court, resisted this vote, which was carried by 168 to 116. The king, in his answer to this address, lamented that the house should question his ecclesiastical power, which had never been done before. This brought on a fresh rebuke, and, in a second address, they positively deny the king's right to suspend any law. "The legislative power," they say, "has always been acknowledged to reside in the king and two houses of parliament." The king, in a speech to the house of lords, complained much of the opposition made by the commons, and found a majority of the former disposed to support him, though both houses concurred in an address against the growth of popery. At length, against the advice of the bolder part of his council, but certainly with a just sense of what he most valued, his ease of mind, Charles gave way to the public voice, and withdrew his declaration.[u]

opposed by parliament.

and withdrawn.

There was, indeed, a line of policy indicated at this

[u] Parl. Hist. 517. The presbyterian party do not appear to have supported the declaration—at least Birch spoke against it: Waller, Seymour, sir Robert Howard in its favour. Baxter says the nonconformists were divided in opinion as to the propriety of availing themselves of the declaration. P. 99. Birch told Pepys, some years before, that he feared some would try for extending the toleration to papists; but the sober party would rather be without it than have it on those terms. Pepys's Diary, Jan. 31, 1688. Parl. Hist. 546, 561. Father Orleans says that Ormond, Arlington, and some others, advised the king to comply; the duke and the rest of the council urging him to adhere, and Shaftesbury, who had been the first mover of the project, pledging himself for its success: there being a party for the king among the commons, and a force on foot enough to daunt the other side. It was suspected that the women interposed, and prevailed on the king to withdraw his declaration. Upon this Shaftesbury turned short round, provoked at the king's want of steadiness, and especially at his giving up the point about issuing writs in the recess of parliament.

time which, though intolerable to the bigotry and passion of the house, would best have foiled the schemes of the ministry; a legislative repeal of all the penal statutes both against the catholic and the protestant dissenter, as far as regarded the exercise of their religion. It must be evident to any impartial man that the unrelenting harshness of parliament, from whom no abatement, even in the sanguinary laws against the priests of the Romish church, had been obtained, had naturally and almost irresistibly driven the members of that persuasion into the camp of prerogative, and even furnished a pretext for that continual intrigue and conspiracy which was carried on in the court of Charles II., as it had been in that of his father. A genuine toleration would have put an end to much of this, but, in the circumstances of that age, it could not have been safely granted without an exclusion from those public trusts which were to be conferred by a sovereign in whom no trust could be reposed.

The act of supremacy in the first year of Elizabeth had imposed on all accepting temporal as well as ecclesiastical offices an oath denying the spiritual jurisdiction of the pope. But though the refusal of this oath when tendered incurred various penalties, yet it does not appear that any were attached to its neglect, or that the oath was a previous qualification for the enjoyment of office, as it was made by a subsequent act of the same reign for sitting in the house of commons. It was found also by experience that persons attached to the Roman doctrine sometimes made use of strained constructions to reconcile the oath of supremacy to their faith. Nor could that test be offered to peers, who were excepted by a special provision. For these several reasons a more effectual security against popish counsellors, at least in notorious power, was created by the famous test act of 1673, which renders the reception of the sacrament according to the rites of the church of England, and a declaration renouncing the doctrine of transubstantiation, preliminary conditions without which no temporal office of trust can be enjoyed.[a] In this fundamental article of faith no compromise or equi-

Test act.

[a] 25 Car. 2, c. 2. Burnet, p. 490.

vocation would be admitted by any member of the church of Rome. And, as the obligation extended to the highest ranks, this reached the end for which it was immediately designed; compelling not only the lord-treasurer Clifford, the boldest and most dangerous of that party, to retire from public business, but the duke of York himself, whose desertion of the protestant church was hitherto not absolutely undisguised, to quit the post of lord-admiral.[y]

It is evident that a test might have been framed to exclude the Roman catholic as effectually as the present without bearing like this on the protestant nonconformist. But, though the preamble of the bill, and the whole history of the transaction, show that the main object was a safeguard against popery, it is probable that a majority of both houses liked it the better for this secondary effect of shutting out the presbyterians still more than had been done by previous statutes of this reign. There took place, however, a remarkable coalition between the two parties; and many who had always acted as high-churchmen and cavaliers, sensible at last of the policy of their common adversaries, renounced a good deal of the intolerance and bigotry that had characterised the present parliament. The dissenters, with much prudence or laudable disinterestedness, gave their support to the test act. In return, a bill was brought in, and after some debate passed to the lords, repealing in a considerable degree the persecuting laws against their worship.[z] The upper house, perhaps invidiously, returned it with amendments more favourable to the dissenters, and insisted upon them after a conference.[a]

[y] The test act began in a resolution, February 28, 1673, that all who refuse to take the oaths and receive the sacrament according to the rites of the church of England shall be incapable of all public employments. Parl. Hist. 556. The court party endeavoured to oppose the declaration against transubstantiation, but of course in vain. Id. 561, 592.

The king had pressed his brother to receive the sacrament in order to avoid suspicion, which he absolutely refused; and this led, he says, to the test. Life of James, p. 482. But his religion was long pretty well known, though he did not cease to conform till 1672.

[z] Parl. Hist. 526-585. These debates are copied from those published by Anchitel Grey, a member of the commons for thirty years; but his notes, though collectively most valuable, are sometimes so brief and ill expressed, that it is hardly possible to make out their meaning. The court and church party, or rather some of them, seem to have much opposed this bill for the relief of protestant dissenters.

[a] Commons' Journals, 28th and 29th March, 1673. Lords' Journals, 24th and

A sudden prorogation very soon put an end to this bill, which was as unacceptable to the court as it was to the zealots of the church of England. It had been intended to follow it up by another, excluding all who should not conform to the established church from serving in the house of commons.[b]

It may appear remarkable that, as if content with these provisions, the victorious country party did not remonstrate against the shutting up of the exchequer, nor even wage any direct war against the king's advisers. They voted, on the contrary, a large supply, which, as they did not choose explicitly to recognise the Dutch war, was expressed to be granted for the king's extraordinary occasions. This moderation, which ought at least to rescue them from the charges of faction and violence, has been censured by some as servile and corrupt; and would really incur censure if they had not attained the great object of breaking the court measures by other means. But the test act, and their steady protestation against the suspending prerogative, crushed the projects and dispersed the members of the cabal. The king had no longer any minister on whom he could rely; and, with his indolent temper, seems from this time, if not to have abandoned all hope of declaring his change of religion, yet to have seen both that and his other favourite projects postponed without much reluctance. From a real predilection, from the prospect of gain, and partly, no doubt, from some distant views of arbitrary power and a catholic establishment, he persevered a long time in clinging secretly to the interest of France; but his active co-operation in the schemes of 1669 was at an end. In

Fall of Shaftesbury and his colleagues.

29th March. The lords were so slow about this bill that the lower house, knowing an adjournment to be in contemplation, sent a message to quicken them, according to a practice not unusual in this reign. Perhaps, on an attentive consideration of the report on the conference (March 29), it may appear that the lords' amendments had a tendency to let in popish, rather than to favour protestant dissenters. Parker says that this act of indulgence was defeated by his great hero, archbishop Sheldon, who proposed that the nonconformists should acknowledge the war against Charles I. to be unlawful. Hist. sui temporis, p. 203 of the translation.

[b] It was proposed, as an instruction to the committee on the test act, that a clause should be introduced rendering nonconformists incapable of sitting in the house of commons. This was lost by 163 to 107; but it was resolved that a distinct bill should be brought in for that purpose. 10th March, 1673.

[c] Kennet, p. 318.

the next session, of October, 1673, the commons drove Buckingham from the king's councils; they intimidated Arlington into a change of policy; and, though they did not succeed in removing the duke of Lauderdale, compelled him to confine himself chiefly to the affairs of Scotland.[d]

[d] Commons' Journals, 20th Jan. 1674. Parl. Hist. 608, 625, 649. Burnet.

CHAPTER XII.

Earl of Danby's Administration—Opposition in the Commons—Frequently corrupt—Character of Lord Danby—Connexion of the Popular Party with France—Its Motives on both Sides—Doubt as to their Acceptance of Money—Secret Treaties of the King with France—Fall of Danby—His Impeachment—Questions arising on it—His Commitment to the Tower—Pardon pleaded in Bar—Votes of Bishops—Abatement of Impeachments by Dissolution—Popish Plot—Coleman's Letters—Godfrey's Death—Injustice of Judges on the Trials—Parliament dissolved—Exclusion of Duke of York proposed—Schemes of Shaftesbury and Monmouth—Unsteadiness of the King—Expedients to avoid the Exclusion—Names of Whig and Tory—New Council formed by Sir William Temple—Long Prorogation of Parliament—Petitions and Addresses—Violence of the Commons—Oxford Parliament—Impeachment of Commoners for Treason constitutional—Fitzharris impeached—Proceedings against Shaftesbury and his Colleagues—Triumph of the Court—Forfeiture of Charter of London—And of other places—Projects of Lord Russell and Sidney—Their Trials—High Tory Principles of the Clergy—Passive Obedience—Some contend for Absolute Power—Filmer—Sir George Mackenzie—Decree of University of Oxford—Connexion with Louis broken off—King's Death.

THE period of lord Danby's administration, from 1673 to 1678, was full of chicanery and dissimulation on the king's side, of increasing suspiciousness on that of the commons. Forced by the voice of parliament and the bad success of his arms into peace with Holland, Charles struggled hard against a co-operation with her in the great confederacy of Spain and the empire to resist the encroachments of France on the Netherlands. Such was in that age the strength of the barrier fortresses, and so heroic the resistance of the prince of Orange, that, notwithstanding the extreme weakness of Spain, there was no moment in that war when the sincere and strenuous intervention of England would not have compelled Louis XIV. to accept the terms of the treaty of Aix la Chapelle. It was the treacherous attachment of Charles II. to French interests that brought the long congress of Nimeguen to an unfortunate termination; and, by surrendering so many towns of Flanders as laid the rest open to future aggres-

Earl of Danby's administration.

sion, gave rise to the tedious struggles of two more wars.[a]

Opposition in the commons.

In the behaviour of the house of commons during this period, previously at least to the session of 1678, there seems nothing which can incur much reprehension from those who reflect on the king's character and intentions; unless it be that they granted supplies rather too largely, and did not sufficiently provide against the perils of the time. But the house of lords contained, unfortunately, an invincible majority for the court, ready to frustrate any legislative security for public liberty. Thus the habeas corpus act, first sent up to that house in 1674, was lost there in several successive sessions. The commons, therefore, testified their sense of public grievances, and kept alive an alarm in the nation, by resolutions and addresses, which a phlegmatic reader is sometimes too apt to consider as factious or unnecessary. If they seem to have dwelt more, in some of these, on the dangers of religion, and less on those of liberty, than we may now think reasonable, it is to be remembered that the fear of popery has always been the surest string to touch for effect on the people; and that the general clamour against that religion was all covertly directed against the duke of York, the most dangerous enemy of every part of our constitution. The real vice of this parliament was not intemperance, but corruption.

Corruption of the parliament.

Clifford, and still more Danby, were masters in an art practised by ministers from the time of James I. (and which indeed can never be unknown where there exists a court and a popular assembly), that of turning to their use the weapons of mercenary eloquence by office, or blunting their edge by bribery.[b] Some who had been once prominent in opposition, as sir Robert Howard and sir Richard Temple, became placemen; some, like

[a] Temple's Memoirs.

[b] Burnet says that Danby bribed the less important members, instead of the leaders, which did not answer so well. But he seems to have been liberal to all. The parliament has gained the name of the pensioned. In that of 1679 sir Stephen Fox was called upon to produce an account of the moneys paid to many of their predecessors. Those who belonged to the new parliament endeavoured to defend themselves, and gave reasons for their pensions; but I observe no one says he did not always vote with the court. Parl. Hist. 1137. North admits that great clamour was excited by this discovery; and well it might. See also Dalrymple, ii. 92.

Garraway and sir Thomas Lee, while they continued to lead the country party, took money from the court for softening particular votes;[c] many, as seems to have been the case with Reresby, were won by promises and the pretended friendship of men in power.[d] On two great classes of questions, France and popery, the commons broke away from all management; nor was Danby unwilling to let his master see their indocility on these subjects. But in general, till the year 1678, by dint of the means before mentioned, and partly no doubt through the honest conviction of many that the king was not likely to employ any minister more favourable to the protestant religion and liberties of Europe, he kept his ground without any insuperable opposition from parliament.[e]

Character of the earl of Danby.

The earl of Danby had virtues as an English minister, which served to extenuate some great errors and an entire want of scrupulousness in his conduct. Zealous against the church of Rome and the aggrandizement of France, he counteracted, while he seemed to yield to, the prepossessions of his

[c] Burnet charges these two leaders of opposition with being bribed by the court to draw the house into granting an enormous supply, as the consideration of passing the test act; and see Pepys, Oct. 6, 1666. Sir Robert Howard and sir Richard Temple were said to have gone over to the court in 1670 through similar inducements. Ralph. Roger North (Examen, p. 456) gives an account of the manner in which men were brought off from the opposition, though it was sometimes advisable to let them nominally continue in it; and mentions Lee, Garraway, and Meres, all very active patriots, if we trust to the parliamentary debates. But, after all, neither Burnet nor Roger North are wholly to be relied on as to particular instances; though the general fact of an extensive corruption be indisputable.

[d] This cunning, self-interested man, who had been introduced to the house by lord Russell and lord Cavendish, and was connected with the country party, tells us that Danby sent for him in Feb. 1677, and assured him that the jealousies of that party were wholly without foundation; that, to his certain knowledge, the king meant no other than to preserve the religion and government by law established; that, if the government was in any danger, it was from those who pretended such a mighty zeal for it. On finding him well disposed, Danby took his proselyte to the king, who assured him of his regard for the constitution, and was right loyally believed. Reresby's Memoirs, p. 36.

[e] "There were two things," says bishop Parker, "which, like Circe's cup, bewitched men and turned them into brutes, viz. popery and French interest. If men otherwise sober heard them once, it was sufficient to make them run mad. But, when those things were laid aside, their behaviour to his majesty was with a becoming modesty." P. 244. Whenever the court seemed to fall in with the national interests on the two points of France and popery, many of the country party voted with them on other questions, though more numerous than their own. Temple, p. 458. See, too, Reresby, p. 25, et alibi.

master. If the policy of England before the peace of Nimeguen was mischievous and disgraceful, it would evidently have been far more so had the king and duke of York been abetted by this minister in their fatal predilection for France. We owe to Danby's influence, it must ever be remembered, the marriage of princess Mary to the prince of Orange, the seed of the revolution and the act of settlement—a courageous and disinterested counsel, which ought not to have proved the source of his greatest misfortunes.[f] But we cannot pretend to say that he was altogether as sound a friend to the constitution of his country as to her national dignity and interests. I do not mean that he wished to render the king absolute. But a minister, harassed and attacked in parliament, is tempted to desire the means of crushing his opponents, or at least of augmenting his own sway. The mischievous bill that passed the house of lords in 1675, imposing as a test to be taken by both houses of parliament, as well as all holding beneficed offices, a declaration that resistance to persons commissioned by the king was in all cases unlawful, and that they would never attempt any alteration in the government in church or state, was promoted by Danby, though it might possibly originate with others.[g] It was appa-

[f] The king, according to James himself, readily consented to the marriage of the princess, when it was first suggested in 1675; the difficulty was with her father. He gave at last a reluctant consent; and the offer was made by lords Arlington and Ossory to the prince of Orange, who received it coolly. Life of James, 501. Temple's Memoirs, p. 397. When he came over to England in Oct. 1677, with the intention of effecting the match, the king and duke wished to defer it till the conclusion of the treaty then in negotiation at Nimeguen; but "the obstinacy of the prince, with the assistance of the treasurer, who from that time entered into the measures and interests of the prince, prevailed upon the flexibility of the king to let the marriage be first agreed and concluded." P. 508. [If we may trust Reresby, which is not perhaps always the case, the duke of York had hopes of marrying the princess Mary to the Dauphin, thus rendering England a province of France. Reresby's Memoirs, p. 109.—1845.]

[g] Kennet, p. 332. North's Examen, p. 61. Burnet. This test was covertly meant against the Romish party, as well as more openly against the dissenters. Life of James, p. 499. Danby set himself up as the patron of the church party and old cavaliers against the two opposing religions, trusting that they were stronger in the house of commons. But the times were so changed that the same men had no longer the same principles, and the house would listen to no measures against nonconformists. He propitiated, however, the prelates, by renewing the persecution under the existing laws, which had been relaxed by the cabal ministry. Baxter, 156, 172. Kennet, 331. Neal, 698. Somers Tracts, vii. 336.

Meanwhile, schemes of comprehension were sometimes on foot; and the prelates affected to be desirous of bringing about

rently meant as a bone of contention among the country party, in which presbyterians and old parliamentarians were associated with discontented cavaliers. Besides the mischief of weakening this party, which indeed the minister could not fairly be expected to feel, nothing could have been devised more unconstitutional, or more advantageous to the court's projects of arbitrary power.

It is certainly possible that a minister who, aware of the dangerous intentions of his sovereign or his colleagues, remains in the cabinet to thwart and countermine them, may serve the public more effectually than by retiring from office; but he will scarcely succeed in avoiding some material sacrifices of integrity, and still less of reputation. Danby, the ostensible adviser of Charles II., took on himself the just odium of that hollow and suspicious policy which appeared to the world. We know indeed that he was concerned, against his own judgment, in the king's secret receipt of money from France, the price of neutrality, both in 1676 and in 1678, the latter to his own ruin.[h] Could the opposition, though not so well apprized of these transactions as we are, be censured for giving little credit to his assurances of zeal against that power; which, though sincere in him, were so little in unison with the disposition of the court? Had they no cause to dread that the great army suddenly raised in 1677, on pretence of being employed

an union; but Morley and Sheldon frustrated them all. Baxter, 156; Kennet, 326; Parker, 25. The bishops, however, were not uniformly intolerant: Croft, bishop of Hereford, published, about 1675, a tract that made some noise, entitled The Naked Truth, for the purpose of moderating differences. It is not written with extraordinary ability, but is very candid and well designed, though conceding so much as to scandalise his brethren. Somers Tracts, vii. 268; Biogr. Brit., art. CROFT, where the book is extravagantly overpraised. Croft was one of the few bishops who, being then very old, advised his clergy to read James II.'s declaration in 1687; thinking, I suppose, though in those circumstances erroneously, that toleration was so good a thing, it was better to have it irregularly than not at all.

[h] Charles received 500,000 crowns for the long prorogation of parliament, from Nov. 1675 to Feb. 1677. In the beginning of the year 1676 the two kings bound themselves by a formal treaty (to which Danby and Lauderdale, but not Coventry or Williamson, were privy) not to enter on any treaties but by mutual consent; and Charles promised, in consideration of a pension, to prorogue or dissolve parliament, if they should attempt to force such treaties upon him. Dalrymple, p. 99. Danby tried to break this off, but did not hesitate to press the French cabinet for the money; and 200,000*l.* was paid. The prince of Orange came afterwards through Rouvigny to a knowledge of this secret treaty. P. 117

against France, might be turned to some worse purposes more congenial to the king's temper?[j]

Connexion of the popular party with France. Its motives on both sides.

This invincible distrust of the court is the best apology for that which has given rise to so much censure, the secret connexions formed by the leaders of opposition with Louis XIV., through his ambassadors Barillon and Rouvigny, about the spring of 1678.[k] They well knew that the king's designs against their liberties had been planned in concert with France, and could hardly be rendered effectual without her aid in money, if not in arms.[m] If

[j] This army consisted of between twenty and thirty thousand men, as fine troops as could be seen (Life of James, p. 512)—an alarming sight to those who denied the lawfulness of any standing army. It is impossible to doubt, from Barillon's correspondence in Dalrymple, that the king and duke looked to this force as the means of consolidating the royal authority. This was suspected at home, and very justly:—"Many well-meaning men," says Reresby, "began to fear the army now raised was rather intended to awe our own kingdom than to war against France, as had at first been suggested:" p. 62. And in a former passage, p. 57, he positively attributes the opposition to the French war in 1678 to "a jealousy that the king indeed intended to raise an army, but never designed to go on with the war; and, to say the truth, some of the king's own party were not very sure of the contrary."

[k] Dalrymple, p. 129. The immediate cause of those intrigues was the indignation of Louis at the princess Mary's marriage. That event, which, as we know from James himself, was very suddenly brought about, took the king of France by surprise. Charles apologised for it to Barillon, by saying, "I am the only one of my party, except my brother." P. 125. This, in fact, was the secret of his apparent relinquishment of French interests at different times in the latter years of his reign; he found it hard to kick constantly against the pricks, and could employ no minister who went cordially along with his predilections. He seems too at times, as well as the duke of York, to have been seriously provoked at the unceasing encroachments of France, which exposed him to so much vexation at Rome.

The connexion with lords Russell and Hollis began in March, 1678, though some of the opposition had been making advances to Barillon in the preceding November: p. 129, 131. See also 'Copies and Extracts of some Letters written to him from the Earl of Danby,' published in 1746, whence it appears that Montagu suspected the intrigues of Barillon, and the mission of Rouvigny, lady Russell's first-cousin, for the same purpose, as early as Jan. 1678, and informed Danby of it: p. 50, 53, 59.

[m] Courtin, the French ambassador who preceded Barillon, had been engaged through great part of the year 1677 in a treaty with Charles for the prorogation or dissolution of Parliament. After a long chaffering, the sum was fixed at 2,000,000 livres; in consideration of which the king of England pledged himself to prorogue parliament from December to April, 1678. It was in consequence of the subsidy being stopped by Louis, in resentment of the princess Mary's marriage, that parliament, which had been already prorogued till April, was suddenly assembled in February. Dalrymple, p. 111. It appears that Courtin had employed French money to bribe members of the commons in 1677 with the knowledge of Charles, assigning as a reason that Spain and the emperor were distributing money on the other side. In the course of this negotiation he assured Charles that the king of France was always ready to employ all

they could draw over this dangerous ally from his side, and convince the king of France that it was not his interest to crush their power, they would at least frustrate the suspected conspiracy, and secure the disbanding of the army; though at a great sacrifice of the continental policy which they had long maintained, and which was truly important to our honour and safety. Yet there must be degrees in the scale of public utility; and, if the liberties of the people were really endangered by domestic treachery, it was ridiculous to think of saving Tournay and Valenciennes at the expense of all that was dearest at home. This is plainly the secret of that unaccountable, as it then seemed, and factious opposition, in the year 1678, which cannot be denied to have served the ends of France, and thwarted the endeavours of lord Danby and sir William Temple to urge on the uncertain and half-reluctant temper of the king into a decided course of policy.[n] Louis, in fact, had no desire to see the king of England absolute over his people, unless it could be done so much by his own help as to render himself the real master of both. In the estimate of kings, or of such kings as Louis XIV., all limitations of sovereignty, all co-ordinate authority of estates and parliaments, are not only derogatory to the royal dignity,

his forces for the confirmation and augmentation of the royal authority in England, so that he should always be master of his subjects, and not depend upon them.

[n] See what Temple says of this, p. 460. The king raised 20,000 men in the spring of 1678, and seemed ready to go into the war; but all was spoiled by a vote, on Clarges's motion, that no money should be granted till satisfaction should be made as to religion. This irritated the king so much that he determined to take the money which France offered him; and he afterwards almost compelled the Dutch to sign the treaty; so much against the prince of Orange's inclinations, that he has often been charged, though unjustly, with having fought the battle of St. Denis after he knew that the peace was concluded. Danby also, in his Vindication (published in 1679, and again in 1710—see State Trials, ii. 434), lays the blame of discouraging the king from embarking in the war on this vote of the commons. And the author of the Life of James II. says very truly that the commons "were in reality more jealous of the king's power than of the power of France; for, notwithstanding all their former warm addresses for hindering the growth of the power of France, when the king had no army, now that he had one they passed a vote to have it immediately disbanded; and the factious party, which was then prevalent among them, made it their only business to be rid of the duke, to pull down the ministers, and to weaken the crown." P. 512.

In defence of the commons it is to be urged that, if they had any strong suspicion of the king's private intrigues with France for some years past, as in all likelihood they had, common prudence would teach them to distrust his pretended desire for war with her; and it is, in fact, most probable that his real object was to be master of a considerable army

but injurious to the state itself, of which they distract the councils and enervate the force. Great armies, prompt obedience, unlimited power over the national resources, secrecy in council, rapidity in execution, belong to an energetic and enlightened despotism: we should greatly err in supposing that Louis XIV. was led to concur in projects of subverting our constitution from any jealousy of its contributing to our prosperity. He saw, on the contrary, in the perpetual jarring of the kings and parliaments, a source of feebleness and vacillation in foreign affairs, and a field for intrigue and corruption. It was certainly far from his design to see a republic, either in name or effect, established in England; but an unanimous loyalty, a spontaneous submission to the court, was as little consonant to his interests; and, especially if accompanied with a willing return of the majority to the catholic religion, would have put an end to his influence over the king, and still more certainly over the duke of York.[o] He had long been sensible of the advantage to be reaped from a malecontent party in England. In the first years after the restoration he kept up a connection with the disappointed commonwealth's men, while their courage was yet fresh and unsubdued; and in the war of 1665 was very nearly exciting insurrections both in England and Ireland.[p] These schemes of course were suspended as he grew into closer friendship with Charles, and saw a surer method of preserving an ascendancy over the kingdom. But, as soon as the princess Mary's marriage, contrary to the king of England's promise, and to the plain intent of all their clandestine negotiations, displayed his faithless and uncertain character to the French cabinet, they determined to make the patriotism, the passion, and the corruption of the house of commons, minister to their resentment and ambition.

[o] The memorial of Blanchard to the prince of Orange, quoted by Dalrymple, p. 201, contains these words: "Le roi auroit été bien fâché qu'il eût été absolu dans ses états; l'une de ses plus constantes maximes depuis son rétablissement ayant été de le diviser d'avec son parlement, et de se servir tantôt de l'un, tantôt de l'autre, toujours par argent pour parvenir à ses fins."

[p] Ralph, p. 116. Œuvres de Louis XIV. ii. 204, and v. 67, where we have a curious and characteristic letter of the king to d'Estrades in Jan. 1662, when he had been provoked by some high language Clarendon had held about the right of the flag.

The views of lord Hollis and lord Russell in this clandestine intercourse with the French ambassador were sincerely patriotic and honourable: to detach France from the king; to crush the duke of York and popish faction; to procure the disbanding of the army, the dissolution of a corrupted parliament, the dismissal of a bad minister.[q] They would indeed have displayed more prudence in leaving these dark and dangerous paths of intrigue to the court which was practised in them. They were concerting measures with the natural enemy of their country, religion, honour, and liberty; whose obvious policy was to keep the kingdom disunited that it might be powerless; who had been long abetting the worst designs of our own court, and who could never be expected to act against popery and despotism, but for the temporary ends of his ambition. Yet, in the very critical circumstances of that period, it was impossible to pursue any course with security; and the dangers of excessive circumspection and adherence to general rules may often be as formidable as those of temerity. The connection of the popular party with France may very probably have frustrated the sinister intentions of the king and duke, by compelling the reduction of the army, though at the price of a great sacrifice of European policy.[r] Such may be, with unprejudiced men, a sufficient apology for the conduct of lord Russell and lord Hollis, the most public-spirited and high-minded characters of their age.

[q] The letters of Barillon in Dalrymple, p. 134, 136, 140, are sufficient proofs of this. He imputes to Danby in one place, p. 142, the design of making the king absolute, and says: "M. le duc d'York se croit perdu pour sa religion, si l'occasion présente ne lui sert à soumettre l'Angleterre; c'est une entreprise fort hardie, et dont le succès est fort douteux." Of Charles himself he says, "Le roi d'Angleterre balance encore à se porter à l'extrémité; son humeur répugne fort au dessein de changer le gouvernement. Il est néanmoins entraîné par M. le duc d'York et par le grand trésorier; mais dans le fond il aimeroit mieux que la paix le mit en état de demeurer en repos, et rétablir ses affaires, c'est-à-dire, un bon revenu; et je crois qu'il ne se soucie pas beaucoup d'être plus absolu qu'il est. Le duc et le trésorier connoissent bien à qui ils ont affaire, et craignent d'être abandonnés par le roi d'Angleterre aux premiers obstacles considérables qu'ils trouveront au dessein de relever l'autorité royale en Angleterre." On this passage it may be observed that there is reason to believe there was no co-operation, but rather a great distrust, at this time between the duke of York and lord Danby. But Barillon had no doubt taken care to infuse into the minds of the opposition those suspicions of that minister's designs.

[r] Barillon appears to have favoured the opposition rather than the duke of York, who urged the keeping up of the army. This was also the great object of the king, who very reluctantly disbanded it in Jan. 1679. Dalrymple, 207, &c.

in this extraordinary and unnatural alliance. It would have been unworthy of their virtue to have gone into so desperate an intrigue with no better aim than that of ruining lord Danby; and of this I think we may fully acquit them. The nobleness of Russell's disposition beams forth in all that Barillon has written of their conferences. Yet, notwithstanding the plausible grounds of his conduct, we can hardly avoid wishing that he had abstained from so dangerous an intercourse, which led him to impair, in the eyes of posterity, by something more like faction than can be ascribed to any other part of his parliamentary life, the consistency and ingenuousness of his character.[a]

Doubt as to the acceptance of money by the popular party.

I have purposely mentioned lord Russell and lord Hollis apart from others who were mingled in the same intrigues of the French ambassador, both because they were among the first with whom he tampered, and because they are honourably distinguished by their abstinence from all pecuniary remuneration, which Hollis refused, and which Barillon did not presume to offer to Russell. It appears, however, from this minister's accounts of the money he had expended in this secret service of the French crown, that, at a later time, namely about the end of 1680, many of the leading members of opposition, sir Thomas Littleton, Mr. Garraway, Mr. Hampden, Mr. Powle, Mr. Sacheverell, Mr. Foley, received sums of 500 or 300 guineas, as testimonies of the king of France's munificence and favour. Among others, Algernon Sidney, who, though not in parliament, was very active out of it, is more than once mentioned. Chiefly because the name of Algernon Sidney had been associated with the most stern and elevated virtue, this statement was received with great reluctance; and many have ventured to call the truth of these pecuniary gratifications in question. This is certainly a bold surmise; though Barillon is known to have been a man of luxurious and expensive habits, and his demands for more money on account of the English court, which continually occur in his correspondence with Louis, may lead to a suspicion that he would be in some measure a gainer by it. This, how-

[a] This delicate subject is treated with great candour as well as judgment by lord John Russell, in his Life of William Lord Russell.

ever, might possibly be the case without actual peculation. But it must be observed that there are two classes of those who are alleged to have received presents through his hands: one, of such as were in actual communication with himself; another, of such as sir John Baber, a secret agent, had prevailed upon to accept it. Sidney was in the first class; but as to the second, comprehending Littleton, Hampden, Sacheverell, in whom it is, for different reasons, as difficult to suspect pecuniary corruption as in him, the proof is manifestly weaker, depending only on the assertion of an intriguer, that he had paid them the money. The falsehood either of Baber or Barillon would acquit these considerable men. Nor is it to be reckoned improbable that persons employed in this clandestine service should be guilty of a fraud, for which they could evidently never be made responsible. We have indeed a remarkable confession of Coleman, the famous intriguer executed for the popish plot, to this effect. He deposed in his examination before the house of commons, in November, 1678, that he had received last session of Barillon 2500*l.* to be distributed among members of parliament, which he had converted to his own use.[1] It is doubtless possible that Coleman, having actually expended this money in the manner intended, bespoke the favour of those whose secret he kept by taking the discredit of such a fraud on himself. But it is also possible that he spoke the truth. A similar uncertainty hangs over the transactions of sir John Baber. Nothing in the parliamentary conduct of the above-mentioned gentlemen in 1680 corroborates the suspicion of an intrigue with France, whatever may have been the case in 1678.

I must fairly confess, however, that the decided bias of my own mind is on the affirmative side of this question; and that principally because I am not so much struck as some have been by any violent improbability in what Barillon wrote to his court on the subject. If indeed we were to read that Algernon Sidney had been bought over by Louis XIV. or Charles II. to assist in setting up absolute monarchy in England, we might fairly oppose our knowledge of his inflexible and haughty

[1] Parl. Hist. 1035; Dalrymple, 200

character, of his zeal, in life and death, for republican liberty. But there is, I presume, some moral distinction between the acceptance of a bribe to desert or betray our principles, and that of a trifling present for acting in conformity to them. The one is, of course, to be styled corruption; the other is repugnant to a generous and delicate mind, but too much sanctioned by the practice of an age far less scrupulous than our own, to have carried with it any great self-reproach or sense of degradation. It is truly inconceivable that men of such property as sir Thomas Littleton or Mr. Foley should have accepted 300 or 500 guineas, the sums mentioned by Barillon, as the price of apostasy from those political principles to which they owed the esteem of their country, or of an implicit compliance with the dictates of France. It is sufficiently discreditable to the times in which they lived that they should have accepted so pitiful a gratuity; unless indeed we should in candour resort to an hypothesis which seems not absurd, that they agreed among themselves not to offend Louis, or excite his distrust, by a refusal of this money. Sidney indeed was, as there is reason to think, a distressed man; he had formerly been in connection with the court of France,[u] and had persuaded himself that the countenance of that power might one day or other be afforded to his darling scheme of a commonwealth; he had contracted a dislike to the prince of Orange, and consequently to the Dutch alliance, from the same governing motive: is it strange that one so circumstanced should have accepted a small gratification from the king of France which implied no dereliction of his duty as an Englishman, or any sacrifice of political integrity? And

[u] Louis XIV. tells us that Sidney had made proposals to France in 1666 for an insurrection, and asked 100,000 crowns to effect it, which was thought too much for an experiment. He tried to persuade the ministers that it was against the interest of France that England should continue a monarchy. Œuvres de Louis XIV., ii. 204. [Sidney's partiality to France displays itself in his Letters to Saville, in 1679, published by Hollis. They evince also a blind credulity in the popish plot. The whole of Sidney's conduct is inconsistent with his having possessed either practical good sense or a just appreciation of the public interests; and his influence over the whig party appears to have been entirely mischievous, though he was not only a much better man than Shaftesbury, which is no high praise, but than the greater number of that faction, as they must be called, notwithstanding their services to liberty. A Tract on Love by Algernon Sidney, in Somers' Tracts, viii. 612, displays an almost Platonic elegance and delicacy of mind.—1845.]

I should be glad to be informed by the idolaters of Algernon Sidney's name, what we know of him from authentic and contemporary sources which renders this incredible.

Secret treaties of the king with France.

France, in the whole course of these intrigues, held the game in her hands. Mistress of both parties, she might either embarrass the king through parliament, if he pretended to an independent course of policy, or cast away the latter when he should return to his former engagements. Hence, as early as May, 1678, a private treaty was set on foot between Charles and Louis, by which the former obliged himself to keep a neutrality, if the allies should not accept the terms offered by France, to recall all his troops from Flanders within two months, to disband most of his army, and not to assemble his parliament for six months: in return he was to receive 6,000,000 livres. This was signed by the king himself on May 27; none of his ministers venturing to affix their names.[x] Yet at this time he was making outward professions of an intention to carry on the war. Even in this secret treaty, so thorough was his insincerity, he meant to evade one of its articles, that of disbanding his troops. In this alone he was really opposed to the wishes of France; and her pertinacity in disarming him seems to have been the chief source of those capricious changes of his disposition which we find for three or four years at this period.[y] Louis again appears not only to have mistrusted the king's own inclinations after the prince of Orange's marriage, and his ability to withstand the eagerness of the nation for war, but to have apprehended that he might become absolute by means of his army, without standing indebted for it to his ancient ally. In this point therefore he faithfully served the popular party. Charles used every endeavour to evade this condition; whether it were that he still entertained hopes of obtaining arbitrary power through intimidation, or

[x] Dalrymple, 162.

[y] His exclamation at Barillon's pressing the reduction of the army to 8000 men is well known. "God's fish! are all the king of France's promises to make me master of my subjects come to this? or does he think that a matter to be done with 8000 men?" Temple says, "He seemed at this time (May, 1678) more resolved to enter into the war than I had ever before seen or thought him."

that, dreading the violence of the house of commons, and ascribing it rather to a republican conspiracy than to his own misconduct, he looked to a military force as his security. From this motive we may account for his strange proposal to the French king of a league in support of Sweden, by which he was to furnish fifteen ships and 10,000 men, at the expense of France, during three years, receiving six millions for the first year, and four for each of the two next. Louis, as is highly probable, betrayed this project to the Dutch government, and thus frightened them into that hasty signature of the treaty of Nimeguen, which broke up the confederacy, and accomplished the immediate objects of his ambition. No longer in need of the court of England, he determined to punish it for that duplicity which none resent more in others than those who are accustomed to practise it. He refused Charles the pension stipulated by the private treaty, alleging that its conditions had not been performed; and urged on Montagu, with promises of indemnification, to betray as much as he knew of that secret, in order to ruin lord Danby.[z]

Fall of Danby. His impeachment.

The ultimate cause of this minister's fall may thus be deduced from the best action of his life; though it ensued immediately from his very culpable weakness in aiding the king's inclinations towards a sordid bargaining with France. It is well known that the famous letter to Montagu, empowering him to make an offer of neutrality for the price of 6,000,000 livres, was not only written by the king's express order, but that Charles attested this with his own signature in a postscript. This bears date five days after an act had absolutely passed to raise money for carrying on the war; a circumstance worthy of particular attention, as it both puts an end to every pretext or apology which the least scrupulous could venture to urge in behalf of this negotiation, and justifies the whig party of England in an invincible distrust, an inexpiable hatred, of so perfidious a cozener as filled the throne. But, as he was beyond their reach, they exercised a constitutional right in the impeachment of his responsible minister. For responsible he surely was; though,

[z] Dalrymple, 178 et post.

strangely mistaking the obligations of an English statesman, Danby seems to fancy in his printed defence that the king's order would be sufficient warrant to justify obedience in any case not literally unlawful. "I believe," he says, "there are very few subjects but what would take it ill not to be obeyed by their servants, and their servants might as justly expect their master's protection for their obedience." The letter to Montagu, he asserts, "was written by the king's command, upon the subject of peace and war, wherein his majesty alone is at all times sole judge, and ought to be obeyed not only by any of his ministers of state but by all his subjects."[a] Such were, in that age, the monarchical or tory maxims of government, which the impeachment of this minister contributed in some measure to overthrow. As the king's authority for the letter to Montagu was an undeniable fact, evidenced by his own handwriting, the commons in impeaching lord Danby went a great way towards establishing the principle that no minister can shelter himself behind the throne by pleading obedience to the orders of his sovereign. He is considered, in the modern theory of the constitution, answerable for the justice, the honesty, the utility of all measures emanating from the crown, as well as for their legality; and thus the executive administration is rendered subordinate, in all great matters of policy, to the superintendence and virtual control of the two houses of parliament. It must at the same time be admitted that, through the heat of honest indignation and some less worthy passions on the one hand, through uncertain and crude principles of constitutional law on the other, this just and necessary impeachment of the earl of Danby was not so conducted as to be exempt from all reproach. The charge of high treason for an offence manifestly amounting only to misdemeanor, with the purpose, not perhaps of taking the life of the accused, but at least of procuring some punishment beyond the law,[b] with the strange mixture

[a] Memoirs relating to the Impeachment of the Earl of Danby, 1710, p. 151, 227. State Trials, vol. xi.

[b] The violence of the next house of commons, who refused to acquiesce in Danby's banishment, to which the lords had changed their bill of attainder, may seem to render it very doubtful whether they would have spared his life. But it is to be remembered that they were exasperated by the pardon he had clandestinely obtained, and pleaded in bar of their impeachment.

of articles, as to which there was no presumptive proof, or which were evidently false, such as concealment of the popish plot, gave such a character of intemperance and faction to these proceedings as may lead superficial readers to condemn them altogether.[c] The compliance of Danby with the king's corrupt policy had been highly culpable, but it was not unprecedented; it was even conformable to the court standard of duty; and as it sprang from too inordinate a desire to retain power, it would have found an appropriate and adequate chastisement in exclusion from office. We judge perhaps somewhat more favourably of lord Danby than his contemporaries at that juncture were warranted to do; but even then he was rather a minister to be pulled down than a man to be severely punished. His one great and undeniable service to the protestant and English interests should have palliated a multitude of errors. Yet this was the mainspring and first source of the intrigue that ruined him.

Questions arising on the impeachment. Danby's commitment to the Tower.

The impeachment of lord Danby brought forward several material discussions on that part of our constitutional law which should not be passed over in this place. 1. As soon as the charges presented by the commons at the bar of the upper house had been read, a motion was made that the earl should withdraw; and another afterwards that he should be committed to the Tower; both of which were negatived by considerable majorities.[d] This refusal to commit on a charge of treason had created a dispute between the two houses in the instance of lord Clarendon.[e] In that case, however, one of the articles of impeachment did actually contain an unquestionable treason. But it was contended with much more force on the present occasion, that if the commons, by merely using the word traitorously, could alter the character of offences which, on their own showing, amounted but to misdemeanors, the boasted certainty of the law in matters of treason would be at an end; and unless it were

[c] The impeachment was carried by 179 to 116, Dec. 19. A motion, Dec. 21, to leave out the word traitorously, was lost by 179 to 141.

[d] Lords' Journals, Dec. 26, 1678. Eighteen peers entered their protests; Halifax, Essex, Shaftesbury, &c.

[e] State Trials, vi. 351, et post. Hatsell's Precedents, iv. 176.

meant that the lords should pass sentence in such a case against the received rules of law, there could be no pretext for their refusing to admit the accused to bail. Even in Straffold's case, which was a condemned precedent, they had a general charge of high treason upon which he was committed; while the offences alleged against Danby were stated with particularity, and upon the face of the articles could not be brought within any reasonable interpretation of the statutes relating to treason. The house of commons faintly urged a remarkable clause in the act of Edward III., which provides that, in case of any doubt arising as to the nature of an offence charged to amount to treason, the judges should refer it to the sentence of parliament; and maintained that this invested the two houses with a declaratory power to extend the penalties of the law to new offences which had not been clearly provided for in its enactments. But, though something like this might possibly have been in contemplation with the framers of that statute, and precedents were not absolutely wanting to support the construction, it was so repugnant to the more equitable principles of criminal law which had begun to gain ground, that even the heat of faction did not induce the commons to insist upon it. They may be considered, however, as having carried their point; for, though the prorogation and subsequent dissolution of the present parliament ensued so quickly that nothing more was done in the matter, yet, when the next house of commons revived the impeachment, the lords voted to take Danby into custody without any further objection.[f] It ought not to be inferred from hence that they were wrong in refusing to commit; nor do I conceive, notwithstanding the later precedent of lord Oxford, that any rule to the contrary is established. In any future case it ought to be open to debate whether articles of impeachment pretending to contain a charge of high treason do substantially set forth overt acts of such a crime; and if the house of lords shall be of opinion, either by consulting the judges or otherwise, that no treason is specially alleged, they should, notwithstanding any technical words, treat the offence as a misdemeanor, and admit the accused to bail.[g]

[f] Lords' Journals, April 16.

[g] "The lord privy seal, Anglesea, in a conference between the two houses," said "that in the transaction of this affair

Pardon pleaded in bar.

2. A still more important question arose as to the king's right of pardon upon a parliamentary impeachment. Danby, who had absconded on the unexpected revival of these proceedings in the new parliament, finding that an act of attainder was likely to pass against him in consequence of his flight from justice, surrendered himself to the usher of the black rod; and, on being required to give in his written answer to the charges of the commons, pleaded a pardon secretly obtained from the king, in bar of the prosecution.[h] The commons resolved that the pardon was illegal and void, and ought not to be pleaded in bar of the impeachment of the commons of England. They demanded judgment at the lords' bar against Danby, as having put in a void plea. They resolved, with that culpable violence which distinguished this and the succeeding house of commons, in order to deprive the accused of the assistance of counsel, that no commoner whatsoever should presume to maintain the validity of the pardon pleaded by the earl of Danby, without their consent, on pain of being accounted a betrayer of the liberties of the commons of England.[i] They denied the right of the bishops to vote on the validity of this pardon. They demanded the appointment of a committee from both houses to regulate the form and manner of proceeding on this impeachment, as well as on that of the five lords accused of participation in the popish plot. The upper house gave some signs of a vacillating and temporizing spirit, not by any means unaccountable. They acceded,

were two great points gained by this house of commons: the first was, that impeachments made by the commons in one parliament continued from session to session, and parliament to parliament, notwithstanding prorogations or dissolutions: the other point was, that in cases of impeachments, upon special matter shown, if the modesty of the party directs him not to withdraw, the lords admit that of right they ought to order him to withdraw, and that afterwards he ought to be committed. But he understood that the lords did not intend to extend the points of withdrawing and committing to general impeachments without special matter alleged; else they did not know how many might be picked out of their house on a sudden."

Shaftesbury said, indecently enough, that they were as willing to be rid of the earl of Danby as the commons, and cavilled at the distinction between general and special impeachments. Commons' Journals, April 12, 1679. On the impeachment of Scroggs for treason, in the next parliament, it was moved to commit him; but the previous question was carried, and he was admitted to bail; doubtless because no sufficient matter was alleged. Twenty peers protested. Lords' Journals, Jan. 7, 1681.

h Lords' Journals, April 25. Parl Hist. 1121, &c.

i Lords' Journals, May 9, 1679.

after a first refusal, to the proposition of a committee, though manifestly designed to encroach on their own exclusive claim of judicature.[k] But they came to a resolution that the spiritual lords had a right to sit and vote in parliament in capital cases, until judgment of death shall be pronounced.[m] The commons of course protested against this vote;[n] but a prorogation soon dropped the curtain over their differences; and Danby's impeachment was not acted upon in the next parliament.

There seems to be no kind of pretence for objecting to the votes of the bishops on such preliminary questions as may arise in an impeachment of treason. It is true that ancient custom has so far engrafted the provisions of the ecclesiastical law on our constitution that they are bound to withdraw when judgment of life or death is pronounced; though even in this they always did it with a protestation of their right to remain. This, once claimed as a privilege of the church, and reluctantly admitted by the state, became, in the lapse of ages, an exclusion and a badge of inferiority. In the constitutions of Clarendon under Henry II. it is enacted, that the bishops and others holding spiritual benefices "in capite" should give their attendance at trials in parliament till it come to sentence of life or member. This, although perhaps too ancient to have authority as statute law, was a sufficient evidence of the constitutional usage, where nothing so material could be alleged on the other side. And, as the original privilege was built upon nothing better than the narrow superstitions of the canon law, there was no reasonable pretext for carrying the exclusion of the spiritual lords farther than certain and constant precedents required. Though it was true, as the enemies of lord Danby urged, that by voting for the validity of his pardon they would

Votes of bishops.

[k] Lords' Journals, May 10 and 11. After the former vote 50 peers, out of 107 who appear to have been present, entered their dissent; and another, the earl of Leicester, is known to have voted with the minority. This unusual strength of opposition no doubt produced the change next day.

[m] May 13. Twenty-one peers were entered as dissentient. The commons inquired whether it were intended by this that the bishops should vote on the pardon of Danby, which the upper house declined to answer, but said they could not vote on the trial of the five popish lords, May 15, 17, 27.

[n] See the report of a committee in Journals, May 26; or Hatsell's Precedents, iv. 374.

in effect determine the whole question in his favour, yet there seemed no serious reason, considering it abstractedly from party views, why they should not thus indirectly be restored for once to a privilege from which the prejudices of former ages alone had shut them out.

The main point in controversy, whether a general or special pardon from the king could be pleaded in answer to an impeachment of the commons, so as to prevent any further proceedings in it, never came to a regular decision. It was evident that a minister who had influence enough to obtain such an indemnity might set both houses of parliament at defiance; the pretended responsibility of the crown's advisers, accounted the palladium of our constitution, would be an idle mockery if not only punishment could be averted but inquiry frustrated. Even if the king could remit the penalties of a guilty minister's sentence upon impeachment, it would be much that public indignation should have been excited against him, that suspicion should have been turned into proof, that shame and reproach, irremissible by the great seal, should avenge the wrongs of his country. It was always to be presumed that a sovereign, undeceived by such a judicial inquiry, or sensible to the general voice it roused, would voluntarily, or at least prudently, abandon an unworthy favourite. Though it might be admitted that long usage had established the royal prerogative of granting pardons under the great seal, even before trial, and that such pardons might be pleaded in bar (a prerogative indeed which ancient statutes, not repealed, though gone into disuse, or rather in no time acted upon, had attempted to restrain), yet we could not infer that it extended to cases of impeachment. In ordinary criminal proceedings by indictment the king was before the court as prosecutor, the suit was in his name; he might stay the process at his pleasure by entering a "noli prosequi;" to pardon, before or after judgment, was a branch of the same prerogative; it was a great constitutional trust, to be exercised at his discretion. But in an appeal, that is, an accusation of felony, brought by the injured party or his next of blood, a proceeding wherein the king's name did not appear, it was undoubted that he could not remit the capital sentence. The same principle seemed applicable to an impeachment at the suit of the commons of

England, demanding justice from the supreme tribunal of the other house of parliament. It could not be denied that James had remitted the whole sentence upon lord Bacon. But impeachments were so unusual at that time, and the privileges of parliament so little out of dispute, that no great stress could be laid on this precedent.

Such must have been the course of arguing, strong on political and specious on legal grounds, which induced the commons to resist the plea put in by lord Danby. Though this question remained in suspense on the present occasion, it was finally decided by the legislature in the act of settlement, which provides that no pardon under the great seal of England be pleadable to an impeachment of the commons in parliament.[o] These expressions seem tacitly to concede the crown's right of granting a pardon after sentence, which, though perhaps it could not well be distinguished in point of law from a pardon pleadable in bar, stands on a very different footing, as has been observed above, with respect to constitutional policy. Accordingly, upon the impeachment of the six peers who had been concerned in the rebellion of 1715, the house of lords, after sentence passed, having come to a resolution on debate that the king had a right to reprieve in cases of impeachment, addressed him to exercise that prerogative as to such of them as should deserve his mercy; and three of the number were in consequence pardoned.[p]

Abatement of impeachments by dissolution.

3. The impeachment of Danby first brought forward another question of hardly less magnitude, and remarkable as one of the few great points in constitutional law which have been discussed and finally settled within the memory of the present generation: I mean the continuance of an impeachment by the commons from one parliament to another. Though this has been put at rest by a determination altogether consonant to maxims of expediency, it seems proper in this place to show briefly the grounds upon which the argument on both sides rested.

In the earlier period of our parliamentary records the

[o] 13 W. III. c. 2.

[p] Parl. Hist. vii. 283. Mr. Lechmere, a very ardent whig, then solicitor-general, and one of the managers on the impeachment, had most confidently denied this prerogative. Id. 233.

business of both houses, whether of a legislative or judicial nature, though often very multifarious, was despatched with the rapidity natural to comparatively rude times, by men impatient of delay, unused to doubt, and not cautious in the proof of facts or attentive to the subtleties of reasoning. The session, generally speaking, was not to terminate till the petitions in parliament for redress had been disposed of, whether decisively or by reference to some more permanent tribunal. Petitions for alteration of the law, presented by the commons and assented to by the lords, were drawn up into statutes by the king's council just before the prorogation or dissolution. They fell naturally to the ground if the session closed before they could be submitted to the king's pleasure. The great change that took place in the reign of Henry VI., by passing bills complete in their form through the two houses instead of petitions, while it rendered manifest to every eye that distinction between legislative and judicial proceedings which the simplicity of olden times had half concealed, did not affect this constitutional principle. At the close of a session every bill then in progress through parliament became a nullity, and must pass again through all its stages before it could be tendered for the royal assent. No sort of difference existed in the effect of a prorogation and a dissolution; it was even maintained that a session made a parliament.

During the fifteenth and sixteenth centuries writs of error from inferior courts to the house of lords became far less usual than in the preceding age; and when they occurred, as error could only be assigned on a point of law appearing on the record, they were quickly decided with the assistance of the judges. But, when they grew more frequent, and especially when appeals from the chancellor, requiring often a tedious examination of depositions, were brought before the lords, it was found that a sudden prorogation might often interrupt a decision; and the question arose whether writs of error, and other proceedings of a similar nature, did not, according to precedent or analogy, cease, or, in technical language, abate, at the close of a session. An order was accordingly made by the house on March 11, 1673, that "the lords' committees for privileges should inquire whether an

appeal to this house, either by writ of error or petition, from the proceedings of any other court, being depending and not determined in one session of parliament, continue in statu quo unto the next session of parliament, without renewing the writ of error or petition or beginning all anew." The committee reported on the 29th of March, after misreciting the order of reference to them in a very remarkable manner, by omitting some words and interpolating others, so as to make it far more extensive than it really was,[q] that upon the consideration of precedents, which they specify, they came to a resolution that "businesses depending in one parliament or session of parliament have been continued to the next session of the same parliament, and the proceedings thereupon have remained in the same state in which they were left when last in agitation." The house approved of this resolution, and ordered it accordingly.[r]

This resolution was decisive as to the continuance of ordinary judicial business beyond the termination of a session. It was still open to dispute whether it might not abate by a dissolution; and the peculiar case of impeachment to which, after the dissolution of the long parliament in 1678, every one's attention was turned, seemed to stand on different grounds. It was referred, therefore, to the committee of privileges on the 11th of March, 1679, to consider whether petitions of appeal which were presented to this house in the last parliament be still in force to be proceeded on. Next day it is referred to the same committee, on a report of the matter of fact as to the impeachments of the earl of Danby and the five popish lords in the late parliament, to consider of the state of the said impeachments and all the incidents relating thereto, and to report to the house. On the 18th of March lord Essex reported from the committee that, "upon perusal of the judgment of this house of the 29th of March, 1673, they are of opinion that, in all cases of appeals and writs of error, they continue, and are to be proceeded on, in statu quo, as they stood at the

[q] Instead of the words in the order, "from the proceedings of any other court," the following are inserted, "or any other business wherein their lordships act as in a court of judicature, and not in their legislative capacity." The importance of this alteration as to the question of impeachment is obvious.

[r] Lords' Journals.

dissolution of the last parliament, without beginning de novo. . . . . And, upon consideration had of the matter referred to their lordships concerning the state of the impeachments brought up from the house of commons the last parliament, &c. . . . . they are of opinion that the dissolution of the last parliament doth not alter the state of the impeachments brought up by the commons in that parliament. This report was taken into consideration next day by the house; and after a debate, which appears from the Journals to have lasted some time, after the previous question had been moved and lost, it was resolved to agree with the committee:[s]

This resolution became for some years the acknowledged law of parliament. Lord Stafford, at his trial in 1680, having requested that his council might be heard as to the point whether impeachments could go from one parliament to another, the house took no notice of this question; though they consulted the judges about another which he had put, as to the necessity of two witnesses to every overt act of treason.[t] Lord Danby and chief-justice Scroggs petitioned the lords in the Oxford parliament, one to have the charges against him dismissed, the other to be bailed; but neither take the objection of an intervening dissolution.[u] And lord Danby, after the dissolution of three successive parliaments since that in which he was impeached, having lain for three years in the Tower, when he applied to be enlarged on bail by the court of king's bench in 1682, was refused by the judges, on the ground of their incompetency to meddle in a parliamentary impeachment; though, if the prosecution were already at an end, he would have been entitled to an absolute discharge. On Jefferies becoming chief-justice of the king's bench, Danby was admitted to bail.[x] But in the parliament of 1685, the impeached lords having petitioned the house, it was resolved that the order of the 19th of March, 1679, be reversed and annulled as to impeachments;

[s] Lords' Journals. Seventy-eight peers were present.

[t] Id. 4th Dec. 1680.

[u] Lords' Journ. March 24, 1681. The very next day the commons sent a message to demand judgment on the impeachment against him. Com. Journ. March 25.

[x] Shower's Reports, ii. 335. "He was bailed to appear at the lords' bar the first day of the then next parliament." The catholic lords were bailed the next day. This proves that the impeachment was not held to be at an end.

and they were consequently released from their recognizances.[y]

The first of these two contradictory determinations is not certainly free from that reproach which so often contaminates our precedents of parliamentary law, and renders an honest man reluctant to show them any greater deference than is strictly necessary. It passed during the violent times of the popish plot; and a contrary resolution would have set at liberty the five catholic peers committed to the Tower, and enabled them probably to quit the kingdom before a new impeachment could be preferred. It must be acknowledged, at the same time, that it was borne out in a considerable degree by the terms of the order of 1673, which seems liable to no suspicion of answering a temporary purpose; and that the court party in the house of lords were powerful enough to have withstood any flagrant innovation in the law of parliament. As for the second resolution, that of 1685, which reversed the former, it was passed in the very worst of times; and, if we may believe the protest signed by the earl of Anglesea and three other peers, with great precipitation and neglect of usual forms. It was not however annulled after the revolution; but, on the contrary, received what may seem at first sight a certain degree of confirmation from an order of the house of lords in 1690, on the petitions of lords Salisbury and Peterborough, who had been impeached in the preceding parliament, to be discharged; which was done, after reading the resolutions of 1679 and 1685, and a long debate thereon. But as a general pardon had come out in the mean time, by which the judges held that the offences imputed to these two lords had been discharged, and as the commons showed no disposition to follow up their impeachment against them, no parliamentary reasoning can perhaps be founded on this precedent.[z] In the case of the duke of Leeds, impeached by the commons in 1695, no further proceedings were had;* but the lords did not make an order for his discharge from the

[y] Lords' Journ ls, May 22, 1685.

[z] Upon considering the proceedings in the house of lords on this subject, Oct. 6 and 30, 1690, and especially the protest signed by eight peers on the latter day, there can be little doubt that their release had been chiefly grounded on the act of grace, and not on the abandonment of the impeachment.

accusation till five years after three dissolutions had intervened, and grounded it upon the commons not proceeding with the impeachment. They did not, however, send a message to inquire if the commons were ready to proceed, which, according to parliamentary usage, would be required in case of a pending impeachment. The cases of lords Somers, Orford, and Halifax were similar to that of the duke of Leeds, except that so long a period did not intervene. These instances therefore rather tend to confirm the position that impeachments did not ipso facto abate by a dissolution, notwithstanding the reversal of the order of 1679. In the case of the earl of Oxford, it was formally resolved in 1717 that an impeachment does not determine by a prorogation of parliament; an authority conclusive to those who maintain that no difference exists in the law of parliament between the effects of a prorogation and a dissolution. But it is difficult to make all men consider this satisfactory.

The question came finally before both houses of parliament in 1791, a dissolution having intervened during the impeachment of Mr. Hastings; an impeachment which, far unlike the rapid proceedings of former ages, had already been for three years before the house of lords, and seemed likely to run on to an almost interminable length. It must have been abandoned in despair, if the prosecution had been held to determine by the late dissolution. The general reasonings, and the force of precedents on both sides, were urged with great ability, and by the principal speakers in both houses; the lawyers generally inclining to maintain the resolution of 1685, that impeachments abate by a dissolution, but against still greater names which were united on the opposite side. In the end, after an ample discussion, the continuance of impeachments, in spite of a dissolution, was carried by very large majorities; and this decision, so deliberately taken, and so free from all suspicion of partiality (the majority in neither house, especially the upper, bearing any prejudice against the accused person), as well as so consonant to principles of utility and constitutional policy, must for ever have set at rest all dispute upon the question.

The year 1678, and the last session of the parliament

that had continued since 1661, were memorable for the great national delusion of the popish plot. For national it was undoubtedly to be called, and by no means confined to the whig or opposition party, either in or out of parliament, though it gave them much temporary strength. And though it was a most unhappy instance of the credulity begotten by heated passions and mistaken reasoning, yet there were circumstances, and some of them very singular in their nature, which explain and furnish an apology for the public error, and which it is more important to point out and keep in mind, than to inveigh, as is the custom in modern times, against the factiousness and bigotry of our ancestors. For I am persuaded that we are far from being secure from similar public delusions, whenever such a concurrence of coincidences and seeming probabilities shall again arise as misled nearly the whole people of England in the popish plot.[a] Popish plot.

It is first to be remembered that there was really and truly a popish plot in being, though not that which Titus Oates and his associates pretended to reveal—not merely in the sense of Hume, who, arguing from the general spirit of proselytism in that religion, says there is a perpetual conspiracy against all governments, protestant, Mahometan, and pagan, but one alert, enterprising, effective, in direct operation against the established protestant religion in England. In this plot the king, the duke of York, and the king of France were chief conspirators; the Romish priests, and especially the Jesuits, were eager co-operators. Their machinations and their hopes, long suspected, and in a general sense known, were divulged by the seizure and publication of Coleman's letters. "We have here," he says, in one of these, "a mighty work upon our hands, no less than the conversion of three kingdoms, and by that perhaps the utter subduing of a pestilent heresy, which has a long time domineered over this northern world. There were never such hopes since the death of our queen Mary as now in our days. Coleman's letters.

[a] Bishop Parker is not wrong in saying that the house of commons had so long accustomed themselves to strange fictions about popery, that upon the first discovery of Oates's plot, they readily believed everything he said; for they had long expected whatever he declared. Hist. of his own Time, p. 248.

God hath given us a prince who is become (I may say by miracle) zealous of being the author and instrument of so glorious a work; but the opposition we are sure to meet with is also like to be great, so that it imports us to get all the aid and assistance we can." These letters were addressed to Father la Chaise, confessor of Louis XIV., and displayed an intimate connexion with France for the great purpose of restoring popery. They came to light at the very period of Oates's discovery; and, though not giving it much real confirmation, could hardly fail to make a powerful impression on men unaccustomed to estimate the value and bearings of evidence.[b]

The conspiracy supposed to have been concerted by the Jesuits at St. Omer, and in which so many English catholics were implicated,* chiefly consisted, as is well known, in a scheme of assassinating the king. Though the obvious falsehood and absurdity of much that the witnesses deposed in relation to this plot render it absolutely incredible, and fully acquit those unfortunate victims of iniquity and prejudice, it could not appear at the time an extravagant supposition that an eager intriguing faction should have considered the king's life a serious obstacle to their hopes. Though as much attached in heart as his nature would permit to the catholic religion, he was evidently not inclined to take any effectual measures in its favour; he was but one year older than his brother, on the contingency of whose succession all their hopes rested, since his heiress was not only brought up in the protestant faith, but united to its most strenuous defender. Nothing could have been more anxiously wished at St. Omer than the death of Charles; and it does not seem improbable that the atrocious fictions of Oates may have been originally suggested by some actual, though vague, projects of assassination, which he had heard in discourse among the ardent spirits of that college.

[b] Parl. Hist. 1024, 1035. State Trials, vii. 1. Kennet, 327, 337, 351. North's Examen, 129, 177. Ralph, 386. Burnet, i. 555. Scroggs tried Coleman with much rudeness and partiality; but his summing up, in reference to the famous passage in the letters, is not deficient in acuteness. In fact, this not only convicted Coleman, but raised a general conviction of the truth of a plot—and a plot there was, though not Oates's.

Murder of sir Edmondbury Godfrey.

The popular ferment which this tale, however undeserving of credit, excited in a predisposed multitude, was naturally wrought to a higher pitch by the very extraordinary circumstances of sir Edmondbury Godfrey's death. Even at this time, although we reject the imputation thrown on the catholics, and especially on those who suffered death for that murder, it seems impossible to frame any hypothesis which can better account for the facts that seem to be authenticated. That he was murdered by those who designed to lay the charge on the papists, and aggravate the public fury, may pass with those who rely on such writers as Roger North,[c] but has not the slightest corroboration from any evidence, nor does it seem to have been suggested by the contemporary libellers of the court party. That he might have had, as an active magistrate, private enemies whose revenge took away his life, which seems to be Hume's conjecture, is hardly more satisfactory; the enemies of a magistrate are not likely to have left his person unplundered; nor is it usual for justices of the peace, merely on account of the discharge of their ordinary duties, to incur such desperate resentment. That he fell by his own hands was doubtless the suggestion of those who aimed at discrediting the plot; but it is impossible to reconcile this with the marks of violence which are so positively sworn to have appeared on his neck: and, on a later investigation of the subject in the year 1682, when the court had become very powerful, and a belief in the plot had grown almost a mark of disloyalty, an attempt made to prove the self-murder of Godfrey, in a trial before Pemberton, failed altogether; and the result of the whole evidence on that occasion was strongly to confirm the supposition that he had perished by the hands of assassins.[d] His death remains at this moment a problem for which no tolerably satisfactory solution can be offered. But at

[c] Examen, p. 196.

[d] R. v. Farwell and others. State Trials, viii. 1361. They were indicted for publishing some letters to prove that Godfrey had killed himself. They defended themselves by calling witnesses to prove the truth of the fact, which, though in a case of libel, Pemberton allowed. But their own witnesses proved that Godfrey's body had all the appearance of being strangled.

The Roman catholics gave out, at the time of Godfrey's death, that he had killed himself, and hurt their own cause by foolish lies. North's Examen, p. 200.

the time it was a very natural presumption to connect it with the plot, wherein he had not only taken the deposition of Oates, a circumstance not in itself highly important, but was supposed to have received the confidential communications of Coleman.[e]

Another circumstance, much calculated to persuade ordinary minds of the truth of the plot, was the trial of Reading, a Romish attorney, for tampering with the witnesses against the accused catholic peers, in order to make them keep out of the way.[f] As such clandestine dealing with witnesses creates a strong, and perhaps with some too strong, a presumption of guilt, where justice is sure to be uprightly administered, men did not make a fair distinction as to times when the violence of the court and jury gave no reasonable hope of escape, and when the most innocent party would much rather procure the absence of a perjured witness than trust to the chance of disproving his testimony.

Injustice of judges on the trials.

There was indeed good reason to distrust the course of justice. Never were our tribunals so disgraced by the brutal manners and iniquitous partiality of the bench as in the latter years of this reign. The State Trials, none of which appear to have been published by the prisoners' friends, bear abundant testimony to the turpitude of the judges. They explained away and softened the palpable contradictions of the witnesses for the crown, insulted and threatened those of the accused, checked all cross-examination, assumed the truth of the charge throughout the whole of every trial.[g] One Whitbread, a jesuit, having been indicted

[e] It was deposed by a respectable witness that Godfrey entertained apprehensions on account of what he had done as to the plot, and had said, "On my conscience, I believe I shall be the first martyr." State Trials, vii. 168. These little additional circumstances, which are suppressed by later historians, who speak of the plot as unfit to impose on any but the most bigoted fanatics, contributed to make up a body of presumptive and positive evidence from which human belief is rarely withheld.

It is remarkable that the most acute and diligent historian we possess for those times, Ralph, does not in the slightest degree pretend to account for Godfrey's death; though, in his general reflections on the plot (p. 555), he relies too much on the assertions of North and l'Estrange.

[f] State Trials, vii. 259. North's Examen, 240.

[g] State Trials, vol. vii. passim. On the trial of Green, Berry, and Hill, for Godfrey's murder, part of the story for the prosecution was, that the body was brought to Hill's lodgings on the Saturday, and remained there till Monday. The prisoner called witnesses who lodged in the same house to prove that it could not have been there without their knowledge. Wild, one of the judges, assuming,

with several others, and the evidence not being sufficient, Scroggs discharged the jury of him, but ordered him to be kept in custody till more proof might come in. He was accordingly indicted again for the same offence. On his pleading that he had been already tried, Scroggs and North had the effrontery to deny that he had been ever put in jeopardy, though the witnesses of the crown had been fully heard, before the jury were most irregularly and illegally discharged of him on the former trial. North said he had often known it done, and it was the common course of law. In the course of this proceeding, Bedloe, who had deposed nothing explicit against the prisoner on the former trial, accounted for this by saying it was not then convenient; an answer with which the court and jury were content.[h]

It is remarkable that, although the king might be justly surmised to give little credence to the pretended plot, and the duke of York was manifestly affected in his interests by the heats it excited, yet the judges most subservient to the court, Scroggs, North, Jones, went with all violence into the popular cry, till, the witnesses beginning to attack the queen and to menace the duke, they found it was time to rein in, as far as they could, the passions they had instigated.[i] Pemberton, a more

as usual, the truth of the story as beyond controversy, said it was very suspicious that they should see or hear nothing of it; and another, Dolben, told them it was well they were not indicted. Id. 199. Jones, summing up the evidence on sir Thomas Gascoigne's trial at York (an aged catholic gentleman, most improbably accused of accession to the plot), says to the jury: "Gentlemen, you have the king's witness on his oath; he that testifies against him is barely on his word, and he is a papist." Id. 1039. Thus deriving an argument from an iniquitous rule, which at that time prevailed in our law, of refusing to hear the prisoner's witnesses upon oath. Gascoigne, however, was acquitted.

It would swell this note to an unwarrantable length were I to extract so much of the trials as might fully exhibit all the instances of gross partiality in the conduct of the judges. I must, therefore, refer my readers to the volume itself—a standing monument of the necessity of the revolution; not only as it rendered the judges independent of the crown, but as it brought forward those principles of equal and indifferent justice, which can never be expected to flourish but under the shadow of liberty.

h State Trials, 119, 315, 344.

i Roger North, whose long account of the popish plot is, as usual with him, a medley of truth and lies, acuteness and absurdity, represents his brother, the chief justice, as perfectly immaculate in the midst of this degradation of the bench. The State Trials, however, show that he was as partial and unjust towards the prisoners as any of the rest, till the government thought it necessary to interfere. The moment when the judges veered round was on the trial of sir George Wakeman, physician to the queen. Scroggs, who had been infamously partial against the prisoners upon every former occasion, now treated Oates and Bedloe as

honest man in political matters, showed a remarkable intemperance and unfairness in all trials relating to popery. Even in that of lord Stafford in 1680, the last, and perhaps the worst, proceeding under this delusion, though the court had a standing majority in the house of lords, he was convicted by fifty-five peers against thirty-one; the earl of Nottingham, lord-chancellor, the duke of Lauderdale, and several others of the administration voting him guilty, while he was acquitted by the honest Hollis and the acute Halifax.[k] So far was the belief in the popish plot, or the eagerness in hunting its victims to death, from being confined to the whig faction, as some writers have been willing to insinuate. None had more contributed to raise the national outcry against the accused, and create a firm persuasion of the reality of the plot, than the clergy in their sermons, even the most respectable of their order, Sancroft, Sharp, Barlow, Burnet, Tillotson, Stillingfleet; inferring its truth from Godfrey's murder or Coleman's letter, calling for the severest laws against catholics, and imputing to them the fire of London, nay even the death of Charles I.[m]

Though the duke of York was not charged with participation in the darkest schemes of the popish conspirators, it was evident that his succession was the great aim of their endeavours, and evident also that he had been engaged in the more real and undeniable intrigues of Coleman. His accession to the throne, long viewed with just apprehension, now seemed to threaten

they deserved, though to the aggravation of his own disgrace. State Trials, vii. 619-686.

[k] Lords' Journals, 7th December; State Trials, 1552; Parl. Hist. 1229. Stafford, though not a man of much ability, had rendered himself obnoxious as a prominent opposer of all measures intended to check the growth of popery. His name appears constantly in protests upon such occasions—as, for instance, March 3, 1678, against the bill for raising money for a French war. Reresby praises his defence very highly, p. 108. The duke of York, on the contrary, or his biographer, observes: "Those who wished lord Stafford well were of opinion that, had he managed the advantages which were given him with dexterity, he would have made the greatest part of his judges ashamed to condemn him; but it was his misfortune to play his game worst when he had the best cards." P. 637.

[m] I take this from extracts out of those sermons, contained in the Roman Catholic pamphlet printed in 1687, and entitled Good Advice to the Pulpits. The Protestant divines did their cause no good by misrepresentation of their adversaries, and by their propensity to rudeness and scurrility. The former fault, indeed, existed in a much greater degree on the opposite side, but by no means the latter. See also a treatise by Barlow, published in 1679, entitled Popish Principles pernicious to Protestant Princes.

such perils to every part of the constitution as ought not supinely to be waited for, if any means could be devised to obviate them. This gave rise to the bold measure of the exclusion bill, too bold indeed for the spirit of the country, and the rock on which English liberty was nearly shipwrecked. In the long parliament, full as it was of pensioners and creatures of court influence, nothing so vigorous would have been successful. Even in the bill which excluded catholic peers from sitting in the house of lords, a proviso, exempting the duke of York from its operation, having been sent down from the other house, passed by a majority of two voices.[n] But the zeal they showed against Danby induced the king to put an end to this parliament of seventeen years' duration; an event long ardently desired by the popular party, who foresaw their ascendancy in the new elections.[o] The next house of commons accordingly came together with an ardour not yet quenched by corruption; and after reviving the impeachments commenced by their predecessors, and carrying a measure long in agitation, a test[p] which shut the catholic peers out of parliament,

Exclusion of duke of York proposed.

Parliament dissolved.

[n] Parl. Hist. 1040.

[o] See Marvell's "Seasonable Argument to persuade all the Grand Juries in England to petition for a new Parliament." He gives very bad characters of the principal members on the court side; but we cannot take for granted all that comes from so unscrupulous a libeller. Sir Harbottle Grimstone had first thrown out, in the session of 1675, that a standing parliament was as great a grievance as a standing army, and that an application ought to be made to the king for a dissolution. This was not seconded, and met with much disapprobation from both sides of the house. Parl. Hist. vii. 64. But the country party, in two years' time, had changed their views, and were become eager for a dissolution. An address to that effect was moved in the house of lords, and lost by only two voices, the duke of York voting for it. Id. 800. This is explained by a passage in Coleman's letters, where that intriguer expresses his desire to see parliament dissolved, in the hope that another would be more favourable to the toleration of catholics. This must mean that the dissenters might gain an advantage over the rigorous church of England men, and be induced to come into a general indulgence.

[p] This test (30 Car. II. stat. 2) is the declaration subscribed by members of both houses of parliament on taking their seats, that there is no transubstantiation of the elements in the Lord's Supper; and that the invocation of saints, as practised in the church of Rome, is idolatrous. The oath of supremacy was already taken by the commons, though not by the lords; and it is a great mistake to imagine that catholics were legally capable of sitting in the lower house before the act of 1679. But it had been the aim of the long parliament in 1642 to exclude them from the house of lords; and this was of course revived with greater eagerness as the danger from their influence grew more apparent. A bill for this purpose passed the commons in 1675, but was thrown out by the peers. Journals, May 14; Nov. 8. It was brought in again in the spring of 1678. Parl. Hist. 930. In the autumn of the same year it was renewed, when the

went upon the exclusion bill. Their dissolution put a stop to this, and in the next parliament the lords rejected it.[q]

The right of excluding an unworthy heir from the succession was supported not only by the plain and fundamental principles of civil society, which establish the interest of the people to be the paramount object of political institutions, but by those of the English constitution. It had always been the better opinion among lawyers that the reigning king, with consent of parliament, was competent to make any changes in the inheritance of the crown; and this, besides the acts passed under Henry VIII. empowering him to name his successor, was expressly enacted, with heavy penalties against such as should contradict it, in the thirteenth year of Elizabeth. The contrary doctrine, indeed, if pressed to its legitimate consequences, would have shaken all the statutes that limit the prerogative; since, if the analogy of entails in private inheritances were to be resorted to, and the existing legislature should be supposed incompetent to alter the line of succession,

lords agreed to the oath of supremacy, but omitted the declaration against transubstantiation, so far as their own house was affected by it. Lords' Journals, Nov. 20, 1678. They also excepted the duke of York from the operation of the bill; which exception was carried in the commons by two voices. Parl. Hist. 1040. The duke of York and seven more lords protested.

The violence of those times on all sides will account for this theological declaration; but it is more difficult to justify its retention at present. Whatever influence a belief in the pope's supremacy may exercise upon men's politics, it is hard to see how the doctrine of transubstantiation can directly affect them; and surely he who renounces the former cannot be very dangerous on account of his adherence to the latter. Nor is it less extraordinary to demand, from any of those who usually compose a house of commons, the assertion that the practice of the church of Rome in the invocation of saints is idolatrous; since, even on the hypothesis that a country gentleman has a clear notion of what is meant by idolatry, he is, in many cases, wholly out of the way of knowing what the church of Rome, or any of its members, believe or practise. The invocation of saints, as held and explained by that church in the council of Trent, is surely not idolatrous, with whatever error it may be charged; but the practice at least of uneducated Roman catholics seems fully to justify the declaration; understanding it to refer to certain superstitions, countenanced or not eradicated by their clergy. I have sometimes thought that the legislator of a great nation sets off oddly by solemnly professing theological positions about which he knows nothing, and swearing to the possession of property which he does not enjoy. [1827.]

[q] The second reading of the exclusion bill was carried, May 21, 1679, by 207 to 128. The debates are in Parliamentary History, 1125, et post. In the next parliament it was carried without a division. Sir Leoline Jenkins alone seems to have taken the high ground that "parliament cannot disinherit the heir of the crown; and that, if such an act should pass, it would be invalid in itself." Id. 1191.

they could as little impair as they could alienate the indefeasible rights of the heir; nor could he be bound by restrictions to which he had never given his assent. It seemed strange to maintain that the parliament could reduce a future king of England to the condition of a doge of Venice by shackling and taking away his authority, and yet could not divest him of a title which they could render little better than a mockery. Those accordingly who disputed the legislative omnipotence of parliament did not hesitate to assert that statutes infringing the prerogative were null of themselves. With the court lawyers conspired the clergy, who pretended these matters of high policy and constitutional law to be within their province, and, with hardly an exception, took a zealous part against the exclusion. It was indeed a measure repugnant to the common prejudices of mankind, who, without entering on the abstract competency of parliament, are naturally accustomed in an hereditary monarchy to consider the next heir as possessed of a right, of which, except through necessity or notorious criminality, he cannot be justly divested. The mere profession of a religion different from the established does not seem, abstractedly considered, an adequate ground for unsettling the regular order of inheritance. Yet such was the narrow bigotry of the sixteenth and seventeenth centuries, which died away almost entirely among protestants in the next, that even the trifling differences between Lutherans and Calvinists had frequently led to alternate persecutions in the German states, as a prince of one or the other denomination happened to assume the government. And the Romish religion in particular was in that age of so restless and malignant a character, that, unless the power of the crown should be far more strictly limited than had hitherto been the case, there must be a very serious danger from any sovereign of that faith; and the letters of Coleman, as well as other evidences, made it manifest that the duke of York was engaged in a scheme of general conversion, which, from his arbitrary temper and the impossibility of succeeding by fair means, it was just to apprehend, must involve the subversion of all civil liberty. Still this was not distinctly perceived by persons at a distance from the scene, imbued, as

most of the gentry were, with the principles of the old cavaliers and those which the church had inculcated. The king, though hated by the dissenters, retained much of the affections of that party, who forgave the vices they deplored, to his father's memory and his personal affability. It appeared harsh and disloyal to force his consent to the exclusion of a brother in whom he saw no crime, and to avoid which he offered every possible expedient.[r] There will always be found in the people of England a strong unwillingness to force the reluctance of their sovereign — a latent feeling, of which parties in the heat of their triumphs are seldom aware, because it does not display itself until the moment of reaction. And although, in the less settled times before the Revolution, this personal loyalty was highly dangerous, and may still, no doubt, sometimes break out so as to frustrate objects of high import to the public weal, it is on the whole a salutary temper for the conservation of the monarchy, which may require such a barrier against the encroachments of factions and the fervid passions of the multitude.

Schemes of Shaftesbury and Monmouth.

The bill of exclusion was drawn with as much regard to the inheritance of the duke of York's daughters as they could reasonably demand, or as any lawyer engaged for them could have shown; though something different seems to be insinuated by Burnet. It provided that the imperial crown of England should descend to and be enjoyed by such person or persons successively during the life of the duke of York as should have inherited or enjoyed the same in case he were naturally dead. If the princess of Orange was not expressly named (which, the bishop tells us, gave a jealousy, as though it were intended to keep that matter still undetermined), this silence was evidently justified by the possible contingency of the birth of a son to the duke, whose right there was no intention in the framers of the bill to defeat. But a large part of the opposition had unfortunately other objects in view. It had been the great error of those

[r] While the exclusion bill was passing the commons, the king took the pains to speak himself to almost every lord, to dissuade him from assenting to it when it should come up; telling them, at the same time, let what would happen, he would never suffer such a villanous bill to pass. Life of James, 553.

who withstood the arbitrary counsels of Charles II. to have admitted into their closest confidence, and in a considerable degree to the management of their party, a man so destitute of all honest principle as the earl of Shaftesbury. Under his contaminating influence their passions became more untractable, their connexions more seditious and democratical, their schemes more revolutionary; and they broke away more and more from the line of national opinion, till a fatal reaction involved themselves in ruin, and exposed the cause of public liberty to its most imminent peril. The countenance and support of Shaftesbury brought forward that unconstitutional and most impolitic scheme of the duke of Monmouth's succession. There could hardly be a greater insult to a nation used to respect its hereditary line of kings than to set up the bastard of a prostitute, without the least pretence of personal excellence or public services, against a princess of known virtue and attachment to the protestant religion. And the effrontery of this attempt was aggravated by the libels eagerly circulated to dupe the credulous populace into a belief of Monmouth's legitimacy. The weak young man, lured on to destruction by the arts of intriguers and the applause of the multitude, gave just offence to sober-minded patriots, who knew where the true hopes of public liberty were anchored, by a kind of triumphal procession through parts of the country, and by other indications of a presumptuous ambition.*

* Ralph, p. 498. The atrocious libel, entitled 'An Appeal from the Country to the City,' published in 1679, and usually ascribed to Ferguson (though said, in Biog. Brit., art. L'ESTRANGE, to be written by Charles Blount), was almost sufficient of itself to excuse the return of public opinion towards the throne. State Tracts, temp. Car. II.; Ralph, i. 476; Parl. Hist. iv. Appendix. The king is personally struck at in this tract with the utmost fury; the queen is called Agrippina, in allusion to the infamous charges of Oates; Monmouth is held up as the hope of the country. "He will stand by you, therefore you ought to stand by him. He who hath the worst title always makes the best king." One Harris was tried for publishing this pamphlet. The jury at first found him guilty of selling—an equivocal verdict, by which they probably meant to deny, or at least to disclaim, any assertion of the libellous character of the publication. But Scroggs telling them it was their province to say guilty or not guilty, they returned a verdict of guilty. State Trials, vii. 925.

Another arrow, dipped in the same poison, was a 'Letter to a Person of Honour concerning the Black Box.' Somers Tracts, viii. 189. The story of a contract of marriage between the king and Mrs. Waters, Monmouth's mother, concealed in a black box, had lately been current; and the former had taken pains to expose its falsehood by a public examination of the gentleman whose name

If any apology can be made for the encouragement given by some of the whig party (for it was by no means general) to the pretensions of Monmouth, it must be found in their knowledge of the king's affection for him, which furnished a hope that he might more easily be brought in to the exclusion of his brother for the sake of so beloved a child than for the prince of Orange. And doubtless there was a period when Charles's acquiescence in the exclusion did not appear so unattainable as, from his subsequent line of behaviour, we are apt to consider it. It appears from the recently-published Life of James that, in the autumn of 1680, the embarrassment of the king's situation, and the influence of the duchess of Portsmouth, who had gone over to the exclusionists, made him seriously deliberate on abandoning his brother.[t] Whether from natural instability of judgment, from the steady adherence of France to the duke of York, or from observing the great strength of the tory party in the house of lords, where the bill was rejected by a majority of 63 to 30, he soon returned to his former disposition. It was long, however, before he treated James with perfect cordiality. Conscious of his own insincerity in religion, which the duke's bold avowal of an obnoxious creed seemed to reproach, he was provoked at bearing so much of the odium and incurring so many of the difficulties

Unsteadiness of the king.

had been made use of. This artful tract is intended to keep up the belief of Monmouth's legitimacy, and even to graft it on the undeniable falsehood of that tale; as if it had been purposely fabricated to delude the people, by setting them on a wrong scent. See also another libel of the same class, p. 197.

Though Monmouth's illegitimacy is past all question, it has been observed by Harris that the princess of Orange, in writing to her brother about Mrs. Waters, in 1655, twice names her as his wife, Thurloe, i. 665, quoted in Harris's Lives, iv. 168. But, though this was a scandalous indecency on her part, it proves no more than that Charles, like other young men in the heat of passion, was foolish enough to give that appellation to his mistress, and that his sister humoured him in it.

Sidney mentions a strange piece of Monmouth's presumption. When he went to dine with the city in October, 1680, it was remarked that the bar, by which the heralds denote illegitimacy, had been taken off the royal arms on his coach. Letters to Saville, p. 54.

[t] Life of James, 592, et post; compare Dalrymple, p. 265, et post. Barillon was evidently of opinion that the king would finally abandon his brother. Sunderland joined the duchess of Portsmouth, and was one of the thirty peers who voted for the bill in November, 1680. James charges Godolphin also with deserting him, p. 615. But his name does not appear in the protest signed by twenty-five peers, though that of the privy seal, Lord Anglesea, does. The duchess of Portsmouth sat near the commons at Stafford's trial, "dispensing her sweetmeats and gracious looks among them." P. 638.

which attended a profession that he had not ventured to make. He told Hyde, before the dissolution of the parliament of 1680, that it would not be in his power to protect his brother any longer, if he did not conform and go to church.[w] Hyde himself, and the duke's other friends, had never ceased to urge him on this subject. Their importunity was renewed by the king's order, even after the dissolution of the Oxford parliament; and it seems to have been the firm persuasion of most about the court that he could only be preserved by conformity to the protestant religion. He justly apprehended the consequences of a refusal; but, inflexibly conscientious on this point, he braved whatever might arise from the timidity or disaffection of the ministers and the selfish fickleness of the king.

In the apprehensions excited by the king's unsteadiness and the defection of the duchess of Portsmouth, he deemed his fortunes so much in jeopardy as to have resolved on exciting a civil war, rather than yield to the exclusion. He had already told Barillon that the royal authority could be re-established by no other means.[x] The episcopal party in Scotland had gone such lengths that they could hardly be safe under any other king. The catholics of England were of course devoted to him. With the help of these he hoped to show himself so formidable that Charles would find it his interest to quit that cowardly line of politics to which he was sacrificing his honour and affections. Louis, never insensible to any occasion of rendering England weak and miserable, directed his ambassador to encourage the duke in this guilty project with the promise of assistance.[y] It seems to have been prevented by the wisdom or public spirit of Churchill, who pointed out to Barillon the absurdity of supposing that the duke could stand by himself in Scotland. This scheme of lighting up the flames of civil war in three kingdoms, for James's private advantage, deserves to be more remarked than it has hitherto been at a time when his apologists seem to have become numerous. If the designs of Russell and Sidney for the preservation of their country's liberty are

[w] Life of James, p. 657.

[x] Il est persuadé que l'autorité royale ne se peut retablir en Angleterre que par une guerre civile. Aug. 29, 1680. Dalrymple, 265.

[y] Dalrymple, 277. Nov. 1680.

blamed as rash and unjustifiable, what name shall we give to the project of maintaining the pretensions of an individual by means of rebellion and general bloodshed?

It is well known that those who took a concern in the maintenance of religion and liberty were much divided as to the best expedients for securing them; some, who thought the exclusion too violent, dangerous, or impracticable, preferring the enactment of limitations on the prerogatives of a catholic king. This had begun, in fact, from the court, who passed a bill through the house of lords in 1677, for the security, as it was styled, of the protestant religion. This provided that a declaration and oath against transubstantiation should be tendered to every king within fourteen days after his accession; that, on his refusal to take it, the ecclesiastical benefices in the gift of the crown should vest in the bishops, except that the king should name to every vacant see one out of three persons proposed to him by the bishops of the province. It enacted also that the children of a king refusing such a test should be educated by the archbishop and two or three more prelates. This bill dropped in the commons; and Marvell speaks of it as an insidious stratagem of the ministry.[z] It is more easy, however, to give hard names to a measure originating with an obnoxious government than to prove that it did not afford a considerable security to the established church, and impose a very remarkable limitation on the prerogative. But the opposition in the house of commons had probably conceived their scheme of exclusion, and would not hearken to any compromise. As soon as the exclusion became the topic of open discussion, the king repeatedly offered to grant every security that could be demanded consistently with the lineal succession. Hollis, Halifax, and for a time Essex, as well as several eminent men in the lower house,

[z] Marvell's Growth of Popery, in State Tracts, temp. Car. II., p. 98. Parl. Hist. 853. The second reading was carried by 127 to 88. Serjeant Maynard, who was probably not in the secrets of his party, seems to have been surprised at their opposition. An objection with Marvell, and not by any means a bad one, would have been that the children of the royal family were to be consigned for education to the sole government of bishops. The duke of York and thirteen other peers protested against this bill, not all of them from the same motives, as may be collected from their names. Lords' Journals, 13th and 15th March, 1679.

were in favour of limitations.[a] But those which they intended to insist upon were such encroachments on the constitutional authority of the crown, that, except a title and revenue, which Charles thought more valuable than all the rest, a popish king would enjoy no one attribute of royalty. The king himself, on the 30th of April, 1679, before the heats on the subject had become so violent as they were the next year, offered not only to secure all ecclesiastical preferments from the control of a popish successor, but to provide that the parliament in being at a demise of the crown, or the last that had been dissolved, should immediately sit and be indissoluble for a certain time; that none of the privy council, nor judges, lord-lieutenant, deputy-lieutenant, nor officer of the navy, should be appointed during the reign of a catholic king, without consent of parliament. He offered at the same time most readily to consent to any further provision that could occur to the wisdom of parliament, for the security of religion and liberty consistently with the right of succession. Halifax, the eloquent and successful opponent of the exclusion, was the avowed champion of limitations. It was proposed, in addition to these offers of the king, that the duke, in case of his accession, should have no negative voice on bills; that he should dispose of no civil or military posts without the consent of parliament; that a council of forty-one, nominated by the two houses, should sit permanently during the recess or interval of parliament, with power of appointing to all vacant offices, subject to the future approbation of the lords and commons.[b] These extraordinary innovations would, at least for the time, have changed our constitution into a republic; and justly appeared to many persons more revolutionary than an alteration in the course of succession. The duke of York looked on them with dismay; Charles, indeed, privately declared that he would never consent to such infringements of the prerogative.[c] It is not, however, easy to perceive how

Expedients to avoid the exclusion.

[a] Lords Russell and Cavendish, sir W. Coventry, and sir Thomas Littleton, seem to have been in favour of limitations. Lord J. Russell, p. 42. Ralph, 446. Sidney's Letters, p. 32. Temple and Shaftesbury, for opposite reasons, stood alone in the council against the scheme of limitations. Temple's Memoirs.

[b] Commons' Journals, 23rd Nov. 1680, 8th Jan. 1681.

[c] Life of James, 634, 671. Dalrymple, p. 307.

he could have escaped from the necessity of adhering to his own propositions, if the house of commons would have relinquished the bill of exclusion. The prince of Orange, who was doubtless in secret not averse to the latter measure, declared strongly against the plan of restrictions, which a protestant successor might not find it practicable to shake off. Another expedient, still more ruinous to James than that of limitations, was what the court itself suggested in the Oxford parliament, that, the duke retaining the title of king, a regent should be appointed, in the person of the princess of Orange, with all the royal prerogatives; nay, that the duke, with his pageant crown on his head, should be banished from England during his life.[d] This proposition, which is a great favourite with Burnet, appears liable to the same objections as were justly urged against a similar scheme at the revolution. It was certain that in either case James would attempt to obtain possession of power by force of arms; and the law of England would not treat very favourably those who should resist an acknowledged king in his natural capacity, while the statute of Henry VII. would, legally speaking, afford a security to the adherents of a de facto sovereign.

Upon the whole, it is very unlikely, when we look at the general spirit and temper of the nation, its predilection for the ancient laws, its dread of commonwealth and fanatical principles, the tendency of the upper ranks to intrigue and corruption, the influence and activity of the church, the bold counsels and haughty disposition of James himself, that either the exclusion, or such extensive limitations as were suggested in lieu of it, could have been carried into effect with much hope of a durable settlement. It would, I should conceive, have been practicable to secure the independence of the judges, to exclude unnecessary placemen and

[d] Dalrymple, p. 301. Life of James, 665, 671. The duke gave himself up for lost when he heard of the clause in the king's speech declaring his readiness to hearken to any expedient but the exclusion. Birch and Hampden, he says, were in favour of this; but Fitzharris's business set the house in a flame, and determined them to persist in their former scheme. Reresby says (p. 19), confirmed by Parl. Hist. 132, it was supported by sir Thomas Littleton, who is said to have been originally against the bill of exclusion, as well as sir William Coventry. Sidney's Letters, p. 82. It was opposed by Jones, Winnington, Booth, and, if the Parliamentary History be right, by Hampden and Birch.

notorious pensioners from the house of commons, to render the distribution of money among its members penal, to remove from the protestant dissenters, by a full toleration, all temptation to favour the court, and above all, to put down the standing army. Though none perhaps of these provisions would have prevented the attempts of this and the next reign to introduce arbitrary power, they would have rendered them still more grossly illegal; and, above all, they would have saved that unhappy revolution of popular sentiment which gave the court encouragement and temporary success.

It was in the year 1679 that the words Whig and Tory were first heard in their application to English factions; and, though as senseless as any cant terms that could be devised, they became instantly as familiar in use as they have since continued. There were then indeed questions in agitation which rendered the distinction more broad and intelligible than it has generally been in later times. One of these, and the most important, was the bill of exclusion; in which, as it was usually debated, the republican principle, that all positive institutions of society are in order to the general good, came into collision with that of monarchy, which rests on the maintenance of a royal line, as either the end, or at least the necessary means, of lawful government. But, as the exclusion was confessedly among those extraordinary measures to which men of tory principles are sometimes compelled to resort in great emergencies, and which no rational whig espouses at any other time, we shall better perhaps discern the formation of these grand political sects in the petitions for the sitting of parliament, and in the counter addresses of the opposite party.

Names of whig and tory.

In the spring of 1679 Charles established a new privy council, by the advice of sir William Temple, consisting in great part of those eminent men in both houses of parliament who had been most prominent in their opposition to the late ministry.[c] He publicly declared his resolu-

New council formed by sir William Temple.

[c] Temple's Memoirs. He says their revenues in land or offices amounted to 300,000*l.* per annum; whereas those of the house of commons seldom exceeded

tion to govern entirely by the advice of this council and that of parliament. The duke of York was kept in what seemed a sort of exile at Brussels.[f] But the just suspicion attached to the king's character prevented the commons from placing much confidence in this new ministry; and, as frequently happens, abated their esteem for those who, with the purest intentions, had gone into the council.[g] They had soon cause to perceive that their distrust had not been excessive. The ministers were constantly beaten in the house of lords; an almost certain test, in our government, of the court's insincerity.[h] The parliament was first prorogued, then dissolved; against the advice, in the latter instance, of the majority of that council by whom the king had pledged himself to be directed. A new parliament, after being summoned to meet in October, 1679, was prorogued for a twelvemonth without the avowed concurrence of any member of the council. Lord Russell, and others of the honester party, withdrew from a board where their presence was only asked in mockery or deceit; and the whole

Long prorogation of parliament.

400,000*l*. The king objected much to admitting Halifax; but himself proposed Shaftesbury, much against Temple's wishes. The funds in Holland rose on the news. Barillon was displeased, and said it was making "des états, et non des conseils;" which was not without weight, for the king had declared he would take no measure, nor even choose any new counsellor, without their consent. But the extreme disadvantage of the position in which this placed the crown rendered it absolutely certain that it was not submitted to with sincerity. Lady Portsmouth told Barillon the new ministry was formed in order to get money from parliament. Another motive, no doubt, was to prevent the exclusion bill.

f Life of James, 558. On the king's sudden illness, Aug. 22, 1679, the ruling ministers, Halifax, Sunderland, and Essex, alarmed at the anarchy which might come on his death, of which Shaftesbury and Monmouth would profit, sent over for the duke, but soon endeavoured to make him go into Scotland; and, after a struggle against the king's tricks to outwit them, succeeded in this object. Id. p. 570, et post.

g Temple. Reresby, p. 89. "So true it is," he says, "that there is no wearing the court and country livery together." Thus also Algernon Sidney, in his letters to Saville, p. 16:—"The king certainly inclines not to be so stiff as formerly in advancing only those that exalt prerogative; but the earl of Essex, and some others that are coming into play thereupon, cannot avoid being suspected of having intentions different from what they have hitherto professed." He ascribed the change of ministry at this time to Sunderland. "If he and two more [Essex and Halifax] can well agree among themselves, I believe they will have the management of almost all business, and may bring much honour to themselves and good to our nation." April 21, 1679. But he writes afterwards, Sept. 8, that Halifax and Essex were become very unpopular, p. 60. "The bare being preferred," says secretary Coventry, "maketh some of them suspected, though not criminal." Lord J. Russell's Life of Lord Russell, p. 90.

h See the protests in 1679, passim.

specious scheme of Temple came to nothing before the conclusion of the year which had seen it displayed.[j] Its author, chagrined at the disappointment of his patriotism and his vanity, has sought the causes of failure in the folly of Monmouth and perverseness of Shaftesbury. He was not aware, at least in their full extent, of the king's intrigues at this period. Charles, who had been induced to take those whom he most disliked into his council, with the hope of obtaining money from parliament, or of parrying the exclusion bill, and had consented to the duke of York's quitting England, found himself enthralled by ministers whom he could neither corrupt nor deceive; Essex, the firm and temperate friend of constitutional liberty in power as he had been out of it, and Halifax, not yet led away by ambition or resentment from the cause he never ceased to approve. He had recourse therefore to his accustomed refuge, and humbly implored the aid of Louis against his own council and parliament. He conjured his patron not to lose this opportunity of making England for ever dependent upon France. These are his own words, such at least as Barillon attributes to him.[k] In pursuance of this overture, a secret treaty was negotiated between the two kings; whereby, after a long haggling, Charles, for a pension of 1,000,000 livres annually during three years, obliged himself not to assemble parliament during that time. This negotiation was broken off through the apprehensions of Hyde and Sunderland, who had been concerned in it, about the end of November, 1679 before the long prorogation which is announced in the Gazette by a proclamation of December 11th. But, the resolution having been already taken not to permit the meeting of parliament, Charles persisted in it as the only means of escaping the bill of exclusion, even when deprived of the pecuniary assistance to which he had trusted.

Though the king's behaviour on this occasion exposed the fallacy of all projects for reconciliation with the

[j] Temple's Memoirs. Life of James, 581. [An article in the London Gazette, Jan. 30, 1680, is rather amusing. "This evening the lord Russell, the lord Cavendish, sir Henry Capel, and Mr. Powle, prayed his Majesty to give them leave to withdraw from the council-board. To which his Majesty was pleased to answer, 'With all his heart.'"—1845.]

[k] Dalrymple, pp. 230, 237.

house of commons, it was very well calculated for his own ends; nor was there any part of his reign wherein he acted with so much prudence as from this time to the dissolution of the Oxford parliament. The scheme concerted by his adversaries, and already put in operation, of pouring in petitions from every part of the kingdom for the meeting of parliament, he checked in the outset by a proclamation, artfully drawn up by chief-justice North, which, while it kept clear of anything so palpably unconstitutional as a prohibition of petitions, served the purpose of manifesting the king's dislike to them, and encouraged the magistrates to treat all attempts that way as seditious and illegal, while it drew over the neutral and lukewarm to the safer and stronger side.[m] Then were first ranged against each other the hosts of Whig and Tory, under their banners of liberty or loyalty; each zealous, at least in profession, to maintain the established constitution, but the one seeking its security by new maxims of government, the other by an adherence to the old.[n] It must be admitted that petitions to the king from bodies of his subjects, intended to advise or influence him in the exercise of his undoubted prerogatives, such as the time of calling parliament together, familiar as they may now have become, had no precedent, except one in the dark year 1640, and were repugnant to the ancient principles of our monarchy. The cardinal principle of toryism is, that the king ought to exercise all his lawful prerogatives without the interference, or unsolicited advice, even of parliament, much less of the people. These novel efforts therefore were met by addresses from most of the grand juries, from the magistrates at quarter sessions, and from many corporations, expressing not merely their entire confidence in the king, but their *abhorrence* of the petitions for the assembling of parliament; a term which, having been casually used in one

Petitions and addresses.

[m] See Roger North's account of this court stratagem. Examen of Kennet, 546. The proclamation itself, however, in the Gazette, 12th Dec. 1679, is more strongly worded than we should expect from North's account of it, and is by no means limited to *tumultuous* petitions.

[n] [The name of whig, meaning sour milk, as is well known, is said to have originated in Scotland in 1648, and was given to those violent covenanters who opposed the duke of Hamilton's invasion of England in order to restore Charles I. Somers Tracts, viii. 349. Tory was a similar nickname for some of the wild Irish in Ulster.—1845.]

address, became the watchword of the whole party.[o] Some allowance must be made for the exertions made by the court, especially through the judges of assize, whose charges to grand juries were always of a political nature. Yet there can be no doubt that the strength of the tories manifested itself beyond expectation. Sluggish and silent in its fields, like the animal which it has taken for its type, the deep-rooted loyalty of the English gentry to the crown may escape a superficial observer, till some circumstance calls forth an indignant and furious energy. The temper shown in 1680 was not according to what the late elections would have led men to expect, not even to that of the next elections for the parliament at Oxford. A large majority returned on both these occasions, and that in the principal counties as much as in corporate towns, were of the whig principle. It appears that the ardent zeal against popery in the smaller freeholders must have overpowered the natural influence of the superior classes. The middling and lower orders, particularly in towns, were clamorous against the duke of York and the evil counsellors of the crown. But with the country gentlemen popery was scarce a more odious word than fanaticism; the memory of the late reign and of the usurpation was still recent, and in the violence of the commons, in the insolence of Monmouth and Shaftesbury, in the bold assaults upon hereditary right, they saw a faint image of that confusion which had once impoverished and humbled them. Meanwhile the king's dissimulation was quite sufficient for these simple loyalists; the very delusion of the popish plot raised his name for religion in their eyes, since his death was the declared aim of the conspirators; nor did he fail to keep alive this favourable prejudice by letting that imposture take its course, and by enforcing the execution of the penal laws against some unfortunate priests.[p]

It is among the great advantages of a court in its contention with the asserters of popular privileges that it

[o] London Gazettes of 1680, passim.

[p] David Lewis was executed at Usk for saying mass, Aug. 27, 1679. State Trials, vii. 256. Other instances occur in the same volume; see especially pp. 811, 839, 849, 857. Pemberton was more severe and unjust towards these unfortunate men than Scroggs. The king, as his brother tells us, came unwillingly into these severities to prevent worse. Life of James, 583.

can employ a circumspect and dissembling policy, which is never found on the opposite side. The demagogues of faction, or the aristocratic leaders of a numerous assembly, even if they do not feel the influence of the passions they excite, which is rarely the case, are urged onwards by their headstrong followers, and would both lay themselves open to the suspicion of unfaithfulness and damp the spirit of their party by a wary and temperate course of proceeding. Yet that incautious violence, to which ill-judging men are tempted by the possession of power, must in every case, and especially where the power itself is deemed an usurpation, cast them headlong. This was the fatal error of that house of commons which met in October, 1680; and to this the king's triumph may chiefly be ascribed. The addresses declaratory of abhorrence of petitions for the meeting of parliament were doubtless intemperate with respect to the petitioners; but it was preposterous to treat them as violations of privilege. A few precedents, and those in times of much heat and irregularity, could not justify so flagrant an encroachment on the rights of the private subject as the commitment of men for a declaration so little affecting the constitutional rights and functions of parliament.[q] The expulsion, indeed, of Withens, their own member, for promoting one of these addresses, though a violent measure, came in point of law within their acknowledged authority.[r] But it was by no means a generally received opinion in that age that the house of commons had an unbounded jurisdiction, directly or indirectly, over their constituents. The lawyers, being chiefly on the side of prerogative, inclined at least to limit very greatly this alleged power of commitment for breach of privilege or contempt of the house. It had very rarely, in fact, been exerted, except in cases of serving legal process on members or other molestation, before the long parliament of Charles I.; a time absolutely discredited by one party, and confessed by every reasonable man to be full of innovation and violence. That the commons had no right of judicature was admitted: was it compatible,

Violence of the commons.

[q] Journals, passim. North's Examen, 377, 561.

[r] They went a little too far, however, when they actually seated sir William Waller in Withens' place for Westminster. Ralph, 514.

many might urge, to principles of reason and justice that they could, merely by using the words contempt or breach of privilege in a warrant, deprive the subject of that liberty which the recent statute of Habeas Corpus had secured against the highest ministers of the crown? Yet one Thompson, a clergyman at Bristol, having preached some virulent sermons, wherein he had traduced the memory of Hampden for refusing the payment of ship-money, and spoken disrespectfully of queen Elizabeth, as well as insulted those who petitioned for the sitting of parliament, was sent for in custody of the serjeant to answer at the bar for his high misdemeanor against the privileges of that house; and was afterwards compelled to find security for his forthcoming to answer to an impeachment voted against him on these strange charges.[s] Many others were brought to the bar, not only for the crime of abhorrence, but for alleged misdemeanors still less affecting the privileges of parliament, such as remissness in searching for papists. Sir Robert Cann, of Bristol, was sent for in custody of the serjeant-at-arms, for publicly declaring that there was no popish, but only a presbyterian plot. A general panic, mingled with indignation, was diffused through the country, till one Stawell, a gentleman of Devonshire, had the courage to refuse compliance with the speaker's warrant; and the commons, who hesitated at such a time to risk an appeal to the ordinary magistrates, were compelled to let this contumacy go unpunished. If, indeed, we might believe the journals of the house, Stawell was actually in custody of the serjeant, though allowed a month's time on account of sickness. This was most probably a subterfuge to conceal the truth of the case.[t]

These encroachments, under the name of privilege, were exactly in the spirit of the long parliament, and revived too forcibly the recollection of that awful period. It was commonly in men's mouths that 1641 was come about again. There appeared indeed for several months a very imminent danger of civil war. I have already mentioned the projects of the duke of York, in case his brother had given way to the exclusion bill. There could be little reason to doubt that many of the opposite

[s] Journals, Dec. 24, 1680. [t] Parl. Hist. i. 174.

leaders were ready to try the question by arms. Reresby has related a conversation he had with lord Halifax immediately after the rejection of the bill, which shows the expectation of that able statesman that the differences about the succession would end in civil war.[u] The just abhorrence good men entertain for such a calamity excites their indignation against those who conspicuously bring it on. And, however desirous some of the court might be to strengthen the prerogative by quelling a premature rebellion, the commons were, in the eyes of the nation, far more prominent in accelerating so terrible a crisis. Their votes in the session of November, 1680, were marked by the most extravagant factiousness.[x]

Oxford parliament.

Their conduct in the short parliament held at Oxford in March, 1681, served still more to alienate the peaceable part of the community. That session of eight days was marked by the rejection of a proposal to vest all effective power during the duke of York's life in a regent, which, as has been already observed, was by no means a secure measure, and by a much less justifiable attempt to screen the author of a treasonable libel from punishment under the pretext of impeaching him at the bar of the upper house. It seems difficult not to suspect that the secret instigation of Barillon, and even his gold, had considerable influence on some of those who swayed the votes of this parliament.

Though the impeachment of Fitzharris, to which I have just alluded, was in itself a mere work of temporary faction, it brought into discussion a considerable question in our constitutional law, which deserves notice both on account of its importance and because a popular writer has

Impeachment of commoners for treason constitutional.

[u] Reresby's Memoirs, 106. Lord Halifax and he agreed, he says, on consideration, that the court party were not only the most numerous, but the most active and wealthy part of the nation.

[x] It was carried by 219 to 95 (17th Nov.) to address the king to remove lord Halifax from his councils and presence for ever. They resolved, nem. con., that no member of that house should accept of any office or place of profit from the crown, or any promise of one, during such time as he should continue a member, and that all offenders herein should be expelled: 30th Dec. They passed resolutions against a number of persons by name whom they suspected to have advised the king not to pass the bill of exclusion: 7th Jan. 1680. They resolved unanimously (10th Jan.) that it is the opinion of this house that the city of London was burnt in the year 1666 by the papists, designing thereby to introduce popery and arbitrary power into this kingdom. They were going on with more resolutions in the same spirit when the usher of the black rod appeared to prorogue them. Parl. Hist.

advanced an untenable proposition on the subject. The commons impeached this man of high treason. The lords voted that he should be proceeded against at common law. It was resolved, in consequence, by the lower house, "that it is the undoubted right of the commons in parliament assembled to impeach before the lords in parliament any peer or commoner for treason, or any other crime or misdemeanor: and that the refusal of the lords to proceed in parliament upon such impeachment is a denial of justice, and a violation of the constitution of parliament."[y] It seems indeed difficult to justify the determination of the lords. Certainly the declaration in the case of sir Simon de Bereford, who having been accused by the king, in the fourth year of Edward III., before the lords, of participating in the treason of Roger Mortimer, that noble assembly protested, "with the assent of the king in full parliament, that, albeit they had taken upon them, as judges of the parliament, in the presence of the king, to render judgment, yet the peers who then were or should be in time to come were not bound to render judgment upon others than peers, nor had power to do so; and that the said judgment thus rendered should never be drawn to example or consequence in time to come, whereby the said peers of the land might be charged to judge others than their peers, contrary to the laws of the land;" certainly, I say, this declaration, even if it amounted to a statute, concerning which there has been some question,[z] was not necessarily to be interpreted as applicable to impeachments at the suit of the commons, wherein the king is no ways a party. There were several precedents in the reign of Richard II. of such impeachments for treason. There had been more than one in that of Charles I. The objection indeed was so novel, that chief-justice Scroggs, having been impeached for treason in the last parliament, though he applied to be admitted to bail, had never insisted on so decisive a plea to the jurisdiction. And if the doctrine adopted by the lords

Fitzharris impeached.

[y] Commons' Journals, March 26, 1681.

[z] Parl. Hist. ii. 54. Lord Hale doubted whether this were a statute. But the judges, in 1689, on being consulted by the lords, inclined to think that it was one; arguing, I suppose, from the words "in full parliament," which have been held to imply the presence and assent of the commons.

were to be carried to its just consequences, all impeachment of commoners must be at an end; for no distinction is taken in the above declaration as to Bereford between treason and misdemeanor. The peers had indeed lost their ancient privilege in cases of misdemeanor, and were subject to the verdict of a jury; but the principle was exactly the same, and the right of judging commoners upon impeachment for corruption or embezzlement, which no one called in question, was as much an exception from the ordinary rules of law as in the more rare case of high treason. It is hardly necessary to observe that the 29th section of Magna Charta, which establishes the right of trial by jury, is by its express language solely applicable to the suits of the crown.

This very dangerous and apparently unfounded theory, broached upon the occasion of Fitzharris's impeachment by the earl of Nottingham, never obtained reception; and was rather intimated than avowed in the vote of the lords that he should be proceeded against at common law. But, after the revolution, the commons having impeached sir Adam Blair and some others of high treason, a committee was appointed to search for precedents on this subject; and, after full deliberation, the house of lords came to a resolution that they would proceed on the impeachments.[a] The inadvertent position therefore of Blackstone,[b] that a commoner cannot be impeached for high treason, is not only difficult to be supported upon ancient authorities, but contrary to the latest determination of the supreme tribunal.

Proceedings against Shaftesbury and College.

No satisfactory elucidation of the strange libel for which Fitzharris suffered death has yet been afforded. There is much probability in the supposition that it was written at the desire of some in the court, in order to cast odium on their adversaries; a very common stratagem of unscrupulous partisans.[c] It caused an impression unfavourable

[a] Hatsell's Precedents, iv. 54, and Appendix, 347. State Trials, viii. 236, and xii. 1218.

[b] Commentaries, vol. iv. c. 19.

[c] Ralph, 664, et post. State Trials, 223, 427. North's Examen, 274. Fitzharris was an Irish papist, who had evidently had interviews with the king through lady Portsmouth. One Hawkins, afterwards made dean of Chichester for his pains, published a narrative of this case, full of falsehoods.

to the whigs in the nation. The court made a dexterous use of that extreme credulity which has been supposed characteristic of the English, though it belongs at least equally to every other people. They seized into their hands the very engines of delusion that had been turned against them. Those perjured witnesses, whom Shaftesbury had hallooed on through all the infamy of the popish plot, were now arrayed in the same court to swear treason and conspiracy against him.[d] Though he escaped by the resoluteness of his grand jury, who refused to find a bill of indictment on testimony which they professed themselves to disbelieve, and which was probably false, yet this extraordinary deviation from the usual practice did harm rather than otherwise to the general cause of his faction. The judges had taken care that the witnesses should be examined in open court, so that the jury's partiality, should they reject such positive testimony, might become glaring. Doubtless it is, in ordinary cases, the duty of a grand juror to find a bill upon the direct testimony of witnesses, where they do not contradict themselves or each other, and where their evidence is not palpably incredible or contrary to his own knowledge. The oath of that inquest is forgotten, either where they render themselves, as seems too often the case, the mere conduit-pipes of accusation, putting a prisoner in jeopardy upon such slender evidence as does not call upon him for a defence; or where, as we have sometimes known in political causes, they frustrate the

[d] State Trials, viii. 759. Roger North's remark on this is worthy of him:—"Having sworn false, as it is manifest some did before to one purpose, it is more likely they swore true to the contrary." Examen, p. 117. And sir Robert Sawyer's observation to the same effect is also worthy of him. On College's trial, Oates, in his examination for the prisoners, said that Turberville had changed sides; Sawyer, as counsel for the crown, answered, "Dr. Oates, Mr. Turberville has not changed sides, you have; he is still a witness for the king, you are against him." State Trials, viii. 639.

The opposite party were a little perplexed by the necessity of refuting testimony they had relied upon. In a dialogue, entitled Ignoramus Vindicated, it is asked, Why were Dr. Oates and others believed against the papists? and the best answer the case admits is given: "Because his and their testimony was backed by that undeniable evidence of Coleman's papers, Godfrey's murder, and a thousand other pregnant circumstances, which makes the case much different from that when people, of very suspected credit, swear the grossest improbabilities." But the same witness, it is urged, had lately been believed against the papists. "What! then," replies the advocate of Shaftesbury; "may not a man be very honest and credible at one time, and six months after, by necessity subornation, malice, or twenty ways, become a notorious villain?"

ends of justice by rejecting indictments which are fully substantiated by testimony. Whether the grand jury of London, in their celebrated ignoramus on the indictment preferred against Shaftesbury, had sufficient grounds for their incredulity I will not pretend to determine.* There was probably no one man among them who had not implicitly swallowed the tales of the same witnesses in the trials for the plot. The nation, however, in general, less bigoted, or at least more honest in their bigotry, than those London citizens, was staggered by so many depositions to a traitorous conspiracy, in those who had pretended an excessive loyalty to the king's person.† Men unaccustomed to courts of justice are naturally prone to give credit to the positive oaths of witnesses. They were still more persuaded when, as in the trial of College at Oxford, they saw this testimony sustained by the approbation of a judge (and that judge a decent person who gave no scandal), and confirmed by the verdict of a jury. The gross iniquity practised towards the prisoner in that trial was not so generally bruited as his conviction.‡ There is in England a remarkable

* Roger North, and the prerogative writers in general, speak of this inquest as a scandalous piece of perjury enough to justify the measures soon afterwards taken against the city. But Ralph, who, at this period of history, is very impartial, seems to think the jury warranted by the absurdity of the depositions. It is to be remembered that the petty juries had shown themselves liable to intimidation, and that the bench was sold to the court. In modern times, such an ignoramus could hardly ever be justified. There is strong reason to believe that the court had recourse to subornation of evidence against Shaftesbury. Ralph, 140, et post. And the witnesses were chiefly low Irishmen, in whom he was not likely to have placed confidence. As to the association found among Shaftesbury's papers, it was not signed by himself, nor, as I conceive, reasonable, only binding the associators to oppose the duke of York, in case of his coming to the crown. State Trials, viii. 786. See also 827 and 835.

† If we may believe James II., the populace hooted Shaftesbury when he was sent to the Tower. Macpherson, 124; Life of James, 688. This was an improvement on the *odit damnatos*. They rejoiced, however, much more, as he owns, at the ignoramus, p. 714.

‡ See College's case in State Trials, viii. 549; and Hawles's remarks on it, 723. Ralph, 626. It is one of the worst pieces of judicial iniquity that we find in the whole collection. The written instructions he had given to his counsel before the trial were taken away from him, in order to learn the grounds of his defence. North and Jones, the judges before whom he was tried, afforded him no protection. But, besides this, even if the witnesses had been credible, it does not appear to me that the facts amounted to treason. Roger North outdoes himself in his justification of the proceedings on his trial. Examen, p. 587. What would this man have been in power, when he writes thus in a sort of prescription twenty years after the revolution! But in justice it should be observed that his portraits of North and

confidence in our judicial proceedings, in part derived from their publicity, and partly from the indiscriminate manner in which jurors are usually summoned. It must be owned that the administration of the two last Stuarts was calculated to show how easily this confiding temper might be the dupe of an insidious ambition.

The king's declaration of the reasons that induced him to dissolve the last parliament, being a manifesto against the late majority of the house of commons, was read in all churches. The clergy scarcely waited for this pretext to take a zealous part for the crown. Every one knows their influence over the nation in any cause which they make their own. They seemed to change the war against liberty into a crusade. They re-echoed from every pulpit the strain of passive obedience, of indefeasible hereditary right, of the divine origin and patriarchal descent of monarchy. Now began again the loyal addresses, more numerous and ardent than in the last year, which overspread the pages of the London Gazette for many months. These effusions stigmatise the measures of the three last parliaments, dwelling especially on their arbitrary illegal votes against the personal liberty of the subject. Their language is of course not alike; yet, amidst all the ebullitions of triumphant loyalty, it is easy in many of them to perceive a lurking distrust of the majesty to which they did homage, insinuated to the reader in the marked satisfaction with which they allude to the king's promise of calling frequent parliaments and of governing by the laws.[h] Triumph of the court.

The whigs, meantime, so late in the heyday of their pride, lay, like the fallen angels, prostrate upon the fiery lake. The scoffs and gibes of libellers, who had trembled before the resolutions of the commons, were showered upon their heads. They had to fear, what was much worse than the insults of these vermin, the perjuries of mercenary informers suborned by their enemies

Jones (id. 512 and 517) are excellent specimens of his inimitable talent for Dutch painting.

[h] London Gazette, 1681, passim. Ralph, 592, has spoken too strongly of their servility, as if they showed a disposition to give up altogether every right and privilege to the crown. This may be true in a very few instances, but is by no means their general tenor. They are exactly high-tory addresses, and nothing more.

to charge false conspiracies against them, and sure of countenance from the contaminated benches of justice. The court, with an artful policy, though with detestable wickedness, secured itself against its only great danger, the suspicion of popery, by the sacrifice of Plunket, the titular archbishop of Dublin.[i] The execution of this worthy and innocent person cannot be said to have been extorted from the king in a time of great difficulty, like that of lord Stafford. He was coolly and deliberately permitted to suffer death, lest the current of loyalty, still sensitive and suspicious upon the account of religion, might be somewhat checked in its course. Yet those who heap the epithets of merciless, inhuman, sanguinary, on the whig party for the impeachment of lord Stafford, in whose guilt they fully believed, seldom mention, without the characteristic distinction of "good-natured," that sovereign who permitted the execution of Plunket, of whose innocence he was assured.[k]

[i] State Trials, viii. 447. Chief justice Pemberton, by whom he was tried, had strong prejudices against the papists, though well enough disposed to serve the court in some respects.

[k] The king, James says in 1679, was convinced of the falsehood of the plot, "while the seeming necessity of his affairs made this unfortunate prince—for so he may well be termed in this conjuncture—think he could not be safe but by consenting every day to the execution of those he knew in his heart to be most innocent; and as for that notion of letting the law take its course, it was such a piece of casuistry as had been fatal to the king his father," &c. 562. If this was blameable in 1679, how much more in 1681.

Temple relates, that, having objected to leaving some priests to the law, as the house of commons had desired in 1679, Halifax said he would tell every one he was a papist if he did not concur; and that the plot must be treated as if it were true, whether it was so or not: p. 339 (folio edit.). A vile maxim indeed! But as Halifax had never showed any want of candour or humanity, and voted lord Stafford not guilty next year, we may doubt whether Temple has represented this quite exactly.

In reference to lord Stafford, I will here notice that lord John Russell, in a passage deserving very high praise, has shown rather too much candour in censuring his ancestor (p. 140) on account of the support he gave (if in fact he did so, for the evidence seems weak) to the objection raised by the sheriffs, Bethell and Cornish, with respect to the mode of Stafford's execution. The king having remitted all the sentence except the beheading, these magistrates thought fit to consult the house of commons. Hume talks of Russell's seconding this "barbarous scruple," as he calls it, and imputes it to faction. But, notwithstanding the epithet, it is certain that the only question was between death by the cord and the axe; and if Stafford had been guilty, as lord Russell was convinced, of a most atrocious treason, he could not deserve to be spared the more ignominious punishment. The truth is, which seems to have escaped both these writers, that, if the king could remit a part of the sentence upon a parliamentary impeachment, it might considerably affect the question whether he could not grant a pardon, which the commons had denied

The hostility of the city of London, and of several other towns, towards the court, degenerating no doubt into a factious and indecent violence, gave a pretext for the most dangerous aggression on public liberty that occurred in the present reign. The power of the democracy in that age resided chiefly in the corporations. These returned, exclusively or principally, a majority of the representatives of the commons. So long as they should be actuated by that ardent spirit of protestantism and liberty which prevailed in the middling classes, there was little prospect of obtaining a parliament that would co-operate with the Stuart scheme of government. The administration of justice was very much in the hands of their magistrates, especially in Middlesex, where all juries are returned by the city sheriffs. It was suggested, therefore, by some crafty lawyers that a judgment of forfeiture obtained against the corporation of London would not only demolish that citadel of insolent rebels, but intimidate the rest of England by so striking an example. True it was that no precedent could be found for the forfeiture of corporate privileges. But general reasoning was to serve instead of precedents, and there was a considerable analogy in the surrenders of the abbeys under Henry VIII., if much authority could be allowed to that transaction. An information, as it is called, quo warranto, was accordingly brought into the court of king's bench against the corporation. Two acts of the common council were alleged as sufficient misdemeanors to warrant a judgment of forfeiture; one, the imposition of certain tolls on goods brought into the city markets by an ordinance or by-law of their own; the other, their petition to the king in December, 1679, for the sitting of parliament, and its publication throughout the country.[m] It would be foreign to the purpose of this work to inquire whether a corporation be in any case subject to forfeiture, the affirmative of which seems to have been held by courts of justice since the revolution; or whether the exaction of tolls in their markets, in consideration of erecting stalls and standings, were within the competence of the city of London; or, if not

Forfeiture of the charter of London, and of other places.

[m] See this petition, Somers Tracts, viii. 144.

so, whether it were such an offence as could legally incur the penalty of a total forfeiture and disfranchisement; since it was manifest that the crown made use only of this additional pretext in order to punish the corporation for its address to the king. The language, indeed, of their petition had been uncourtly, and what the adherents of prerogative would call insolent; but it was at the worst rather a misdemeanor, for which the persons concerned might be responsible, than a breach of the trust reposed in the corporation. We are not, however, so much concerned to argue the matter of law in this question, as to remark the spirit in which the attack on this stronghold of popular liberty was conceived. The court of king's bench pronounced judgment of forfeiture against the corporation; but this judgment, at the request of the attorney-general, was only recorded; the city continued in appearance to possess its corporate franchises, but upon submission to certain regulations: namely, that no mayor, sheriff, recorder, or other chief officer, should be admitted until approved by the king; that, in the event of his twice disapproving their choice of a mayor, he should himself nominate a fit person, and the same in case of sheriffs, without waiting for a second election; that the court of aldermen, with the king's permission, might remove any one of their body; that they should have a negative on the elections of common-councilmen, and, in case of disapproving a second choice, have themselves the nomination. The corporation submitted thus to purchase the continued enjoyment of its estates at the expense of its municipal independence; yet, even in the prostrate condition of the whig party, the question to admit these regulations was carried by no great majority in the common councils.[n] The city was, of course, absolutely subservient to the court from this time to the revolution.

After the fall of the capital it was not to be expected that towns less capable of defence should stand out. Informations quo warranto were brought against several corporations, and a far greater number hastened to anticipate the assault by voluntary surrenders. It seemed to be recognised as law by the judgment against London

[n] State Trials, viii. 1039-1340. Ralph, 517. The majority was but 104 to 86; a division honourable to the spirit of the citizens

that any irregularity or misuse of power in a corporation might incur a sentence of forfeiture, and few could boast that they were invulnerable at every point. The judges of assize in their circuits prostituted their influence and authority to forward this and every other encroachment of the crown. Jeffreys, on the northern circuit, in 1684, to use the language of Charles II.'s most unblushing advocate, "made all the charters, like the walls of Jericho, fall down before him, and returned laden with surrenders, the spoils of towns."[o] They received, instead, new charters, framing the constitution of these municipalities in a more oligarchical model, and reserving to the crown the first appointment of those who were to form the governing part of the corporation. These changes were gradually brought about in the last three years of Charles's reign and in the beginning of the next.

Projects of lord Russell and Sidney.

There can be nothing so destructive to the English constitution, not even the introduction of a military force, as the exclusion of the electoral body from their franchises. The people of this country are, by our laws and constitution, bound only to obey a parliament duly chosen; and this violation of charters, in the reigns of Charles and James, appears to be the great and leading justification of that event which drove the latter from the throne. It can therefore be no matter of censure, in a moral sense, that some men of pure and patriotic virtue, mingled, it must be owned, with others of a far inferior temper, began to hold consultations as to the best means of resisting a government which, whether to judge from these proceedings, or from the language of its partisans, was aiming without disguise at an arbitrary power. But as resistance to established authority can never be warrantable until it is expedient, we could by no means approve any schemes of insurrection that might be projected in 1682, unless we could perceive that there was a fair chance of their success. And this we are not led, by what we read of the spirit of those times, to believe. The tide ran violently in another direction; the courage of the whigs was broken; their adversaries were strong in numbers

[o] North's Examen, 626.

and in zeal. But hence it is reasonable to infer that men like lord Essex and lord Russell, with so much to lose by failure, with such good sense, and such abhorrence of civil calamity, would not ultimately have resolved on the desperate issue of arms, though they might deem it prudent to form estimates of their strength, and to knit together a confederacy which absolute necessity might call into action. It is beyond doubt that the supposed conspirators had debated among themselves the subject of an insurrection, and poised the chances of civil war.[o] Thus much the most jealous lawyer, I presume, will allow might be done, without risking the penalties of treason. They had, however, gone farther; and by concerting measures in different places as well as in Scotland, for a rising, though contingently, and without any fixed determination to carry it into effect, most probably (if the whole business had been disclosed in testimony) laid themselves open to the law, according to the construction it has frequently received. There is a considerable difficulty, after all that has been written, in stating the extent of their designs; but I think we may assume that a wide-spreading and formidable insurrection was for several months in agitation.[p] But the difficulties and hazards of the enterprise had already caused lord Russell and lord Essex to recede from the desperate counsels of Shaftesbury; and but for the unhappy detection of the conspiracy and the perfidy of lord Howard, these two noble persons, whose lives were untimely lost to their country, might have survived to join the banner and support the throne of William. It is needless to observe that the minor plot, if we may use that epithet in reference to the relative dignity of the conspirators, for assassinating the king and the duke of York, had no immediate connexion with the schemes of Russell, Essex, and Sidney.[q]

[p] Lady Russell's opinion was that "it was no more than what her lord confessed, talk—and it is possible that talk going so far as to consider, if a remedy for supposed evils might be sought, how it could be formed." Life of Lord Russell, p. 266. It is not easy, however, to talk long in this manner about the *how* of treason without incurring the penalties of it.

[q] See this business well discussed by the acute and indefatigable Ralph, p. 722, and by lord John Russell, p. 253. See also State Trials, ix. 358, et post. There appears no cause for doubting the reality of what is called the Rye-house Plot. The case against Walcot, id. 519, was pretty well proved; but his own confession completely hanged him and his friends too. His attainder was reversed after the revolution, but only on account

But it is by no means a consequence from the admission we have made that the evidence adduced on lord Russell's trial was sufficient to justify his conviction.[r] It appears to me that lord Howard, and perhaps Rumsey, were unwilling witnesses; and that the former, as is frequently the case with those who betray their friends in order to save their own lives, divulged no more than was extracted by his own danger. The testimony of neither witness, especially Howard, was given with any degree of that precision which is exacted in modern times; and, as we now read the trial, it is not probable that a jury in later ages would have found a verdict of guilty, or would have been advised to it by the court. But, on the other hand, if lord Howard were really able to prove more than he did, which I much suspect, a better-conducted examination would probably have elicited facts unfavourable to the prisoner which at present do not appear. It may be

Their trial.

of some technical errors, not essential to the merits of the case.

[r] State Trials, ix. 577. Lord Essex cut his throat in the Tower. He was a man of the most excellent qualities, but subject to constitutional melancholy, which overcame his fortitude; an event the more to be deplored, as there seems to have been no possibility of his being convicted. A suspicion, as is well known, obtained credit with the enemies of the court that lord Essex was murdered; and some evidence was brought forward by the zeal of one Braddon. The late editor of the State Trials seems a little inclined to revive this report, which even Harris (Life of Charles, p. 352) does not venture to accredit; and I am surprised to find lord John Russell observe, "It would be idle, at the present time, to pretend to give any opinion on the subject:" p. 152. This I can by no means admit. We have, on the one side, some testimonies by children, who frequently invent and persist in falsehoods with no conceivable motive. But, on the other hand, we are to suppose that Charles II. and the duke of York caused a detestable murder to be perpetrated on one towards whom they had never shown any hostility, and in whose death they had no interest. Each of these princes had faults enough; but I may venture to say that they were totally incapable of such a crime. One of the presumptive arguments of Braddon, in a pamphlet published long afterwards, is, that the king and his brother were in the Tower on the morning of lord Essex's death. If this leads to anything, we are to believe that Charles II., like the tyrant in a Grub-street tragedy, came to kill his prisoner with his own hands. Any man of ordinary understanding (which seems not to have been the case with Mr. Braddon) must perceive that the circumstance tends to repel suspicion rather than the contrary. See the whole of this, including Braddon's pamphlet, in State Trials, ix. 1127. [I am sorry to read in an article of the Edinburgh Review by an eloquent friend, "Essex added a yet sadder and more fearful story to the bloody chronicles of the Tower." Macaulay's Essays, iii. 93, and Edinburgh Review, 1838. For though this may imply no more than his suicide, it will generally be construed in another sense. And surely the critical judgment cannot be satisfied with evidence which might weigh, as I have heard it did, with the pardonable prejudices of a descendant. —1845.]

doubtful whether any overt act of treason is distinctly proved against lord Russell, except his concurrence in the project of a rising at Taunton, to which Rumsey deposes. But this, depending on the oath of a single witness, could not be sufficient for a conviction.

Pemberton, chief justice of the common pleas, tried this illustrious prisoner with more humanity than was usually displayed on the bench; but, aware of his precarious tenure in office, he did not venture to check the counsel for the crown, Sawyer and Jeffreys, permitting them to give a great body of hearsay evidence, with only the feeble and useless remark that it did not affect the prisoner.[s] Yet he checked lord Anglesea, when he offered similar evidence for the defence. In his direction to the jury, it deserves to be remarked that he by no means advanced the general proposition which better men have held, that a conspiracy to levy war is in itself an overt act of compassing the king's death; limiting it to cases where the king's person might be put in danger, as, in the immediate instance, by the alleged scheme of seizing his guards.[t] His language, indeed, as recorded in the printed trial, was such as might have produced a verdict of acquittal from a jury tolerably disposed towards the prisoner; but the sheriffs, North and Rich, who had been illegally thrust into office, being men wholly devoted to the prerogative, had taken care to return a panel in whom they could confide.[u]

The trial of Algernon Sidney, at which Jeffreys, now raised to the post of chief justice of the king's bench, presided, is as familiar to all my readers as that of lord Russell.[x] Their names have been always united in

[s] State Trials, 615. Sawyer told lord Russell, when he applied to have his trial put off, that he would not have given the king an hour's notice to save his life. Id. 582. Yet he could not pretend that the prisoner had any concern in the assassination plot.

[t] The act annulling lord Russell's attainder recites him to have been "wrongfully convicted by partial and unjust constructions of law." State Trials, ix. 696. Several pamphlets were published after the revolution by sir Robert Atkins and sir John Hawles against the conduct of the court in this trial, and by sir Bartholomew Shower in behalf of it. These are in the State Trials. But Holt, by laying down the principle of constructive treason in Ashton's case, established for ever the legality of Pemberton's doctrine, and indeed carried it a good deal farther.

[u] There seems little doubt that the juries were packed through a conspiracy of the sheriffs with Burton and Graham, solicitors for the crown. State Trials, ix. 932. These two men ran away at the revolution; but Roger North vindicates their characters, and those who trust in him may think them honest.

[x] State Trials, ix. 818.

grateful veneration and sympathy. It is notorious that Sidney's conviction was obtained by a most illegal distortion of the evidence. Besides lord Howard, no living witness could be produced to the conspiracy for an insurrection; and though Jeffreys permitted two others to prepossess the jury by a secondhand story, he was compelled to admit that their testimony could not directly affect the prisoner.[y] The attorney-general, therefore, had recourse to a paper found in his house, which was given in evidence, either as an overt act of treason by its own nature, or as connected with the alleged conspiracy; for though it was only in the latter sense that it could be admissible at all, yet Jeffreys took care to insinuate, in his charge to the jury, that the doctrines it contained were treasonable in themselves, and without reference to other evidence. In regard to truth, and to that justice which cannot be denied to the worst men in their worst actions, I must observe that the common accusation against the court in this trial, of having admitted insufficient proof by the mere comparison of handwriting, though alleged, not only in most of our historians, but in the act of parliament reversing Sidney's attainder, does not appear to be well founded; the testimony to that fact, unless the printed trial is falsified in an extraordinary degree, being such as would be received at present.[z] We may allow, also, that the

[y] State Trials, ix. 846. Yet in summing up the evidence he repeated all West and Keeling had thus said at secondhand, without reminding the jury that it was not legal testimony. Id. 899. It would be said by his advocates, if any are left, that these witnesses must have been left out of the question, since there could otherwise have been no dispute about the written paper. But they were undoubtedly intended to prop up Howard's evidence, which had been so much shaken by his previous declaration that he knew of no conspiracy.

[z] This is pointed out, perhaps for the first time, in an excellent modern lawbook, Phillipps's Law of Evidence. Yet the act for the reversal of Sidney's attainder declares in the preamble that "the paper, supposed to be his handwriting, was not proved by the testimony of any one witness to be written by him, but the jury was directed to believe it by comparing it with other writings of the said Algernon." State Trials, 997. This does not appear to have been the case; and though Jeffreys is said to have garbled the manuscript trial before it was printed (for all the trials at this time were published by authority, which makes them much better evidence against the judges than for them), yet he can hardly have substituted so much testimony without its attracting the notice of Atkins and Hawles, who wrote after the revolution. However, in Hayes's case, State Trials, x. 312, though the prisoner's handwriting to a letter was proved in the usual way by persons who had seen him write, yet this letter was also shown to the jury, along with some of his acknowledged writing, for the purpose of

passages from this paper, as laid in the indictment, containing very strong assertions of the right of the people to depose an unworthy king, might by possibility, if connected by other evidence with the conspiracy itself, have been admissible as presumptions for the jury to consider whether they had been written in furtherance of that design. But when they came to be read on the trial with their context, though only with such parts of that as the attorney-general chose to produce out of a voluminous manuscript, it was clear that they belonged to a theoretical work on government, long since perhaps written, and incapable of any bearing upon the other evidence.[a]

The manifest iniquity of this sentence upon Algernon Sidney, as well as the high courage he displayed throughout these last scenes of his life, have inspired a sort of enthusiasm for his name, which neither what we know of his story, nor the opinion of his contemporaries, seems altogether to warrant. The crown of martyrdom should be suffered perhaps to exalt every virtue, and efface every defect, in patriots, as it has often done in saints. In the faithful mirror of history Sidney may lose something of this lustre. He possessed no doubt a powerful, active, and undaunted mind, stored with extensive reading on the topics in which he delighted. But having proposed one only object for his political conduct, the establishment of a republic in England, his pride and inflexibility, though they gave a dignity to his character, rendered his views narrower and his temper unaccommodating. It was evident to every reasonable man that a republican government, being adverse to the prepossessions of a great majority of the people, could only be brought about and maintained by the force of usurpation. Yet for this idol of his speculative hours he was content to sacrifice the liberties of Europe, to plunge the country in civil war, and even to stand indebted to

their comparison. [See also the trials of the seven bishops. Id. xii. 295.] It is possible, therefore, that the same may have been done on Sidney's trial, though the circumstance does not appear. Jeffreys indeed says, "Comparison of hands was allowed for good proof in Sidney's case." Id. 313. But I do not believe that the expression was used in that age so precisely as it is at present; and it is well known to lawyers that the rules of evidence on this subject have only been distinctly laid down within the memory of the present generation.

[a] See Harris's Lives, v. 347

France for protection. He may justly be suspected of having been the chief promoter of the dangerous cabals with Barillon; nor could any tool of Charles's court be more sedulous in representing the aggressions of Louis XIV. in the Netherlands as indifferent to our honour and safety.

Sir Thomas Armstrong, who had fled to Holland on the detection of the plot, was given up by the States. A sentence of outlawry, which had passed against him in his absence, is equivalent, in cases of treason, to a conviction of the crime. But the law allows the space of one year, during which the party may surrender himself to take his trial. Armstrong, when brought before the court, insisted on this right, and demanded a trial. Nothing could be more evident, in point of law, than that he was entitled to it; but Jeffreys, with inhuman rudeness, treated his claim as wholly unfounded, and would not even suffer counsel to be heard in his behalf. He was executed accordingly without trial.[b] But it would be too prolix to recapitulate all the instances of brutal injustice, or of cowardly subserviency, which degraded the English lawyers of the Stuart period, and never so infamously as in these last years of Charles II. From this prostitution of the tribunals, from the intermission of parliaments, and the steps taken to render them in future mere puppets of the crown, it was plain that all constitutional securities were at least in abeyance; and those who felt themselves most obnoxious, or whose spirit was too high to live in an enslaved country, retired to Holland as an asylum in which they might wait the occasion of better prospects, or, at the worst, breathe an air of liberty.

Meanwhile the prejudice against the whig party, which had reached so great a height in 1681, was still farther enhanced by the detection of the late conspiracy. The atrocious scheme of assassination alleged against Walcot and some others who had suffered was blended by the arts of the court and clergy, and by the blundering credulity of the gentry, with those less heinous projects ascribed to lord Russell and his associates.[c]

[b] State Trials, x. 105.

[c] The grand jury of Northamptonshire, in 1683, 'present it as very expedient, and necessary for securing the peace of this country, that all ill-affected persons may give security for the peace;" speci-

These projects, if true in their full extent, were indeed such as men honestly attached to the government of their country could not fail to disapprove. For this purpose a declaration full of malicious insinuations was ordered to be read in all churches.[d] It was generally commented upon, we may make no question, in one of those loyal discourses, which, trampling on all truth, charity, and moderation, had no other scope than to inflame the hearers against nonconforming protestants, and to throw obloquy on the constitutional privileges of the subject.

High-tory principles of the clergy.

It is not my intention to censure, in any strong sense of the word, the Anglican clergy at this time for their assertion of absolute non-resistance, so far as it was done without calumny and insolence towards those of another way of thinking, and without self-interested adulation of the ruling power. Their error was very dangerous, and had nearly proved destructive of the whole constitution; but it was one which had come down with high recommendation, and of which they could only perhaps be undeceived, as men are best undeceived of most errors, by experience that it might hurt themselves. It was the tenet of their homilies, their canons, their most distinguished divines and casuists; it had the apparent sanction of the legislature in a statute of the present reign. Many excellent men, as was shown after the revolution, who had never made use of this doctrine as an engine of faction or private interest, could not disentangle their minds from the arguments or the authority on which it rested. But by too great a number it was eagerly brought forward to serve the purposes of arbitrary power, or at best to fix the wavering protestantism of the court by professions of unimpeachable loyalty. To this motive, in fact, we may trace a good deal of the vehemence with which the non-resisting principle had been originally advanced by the church of England under the Tudors, and was continually urged under the Stuarts. If we look at the tracts and sermons published by both parties after the restoration, it will appear manifest that the Romish and Anglican churches bade, as it were, against each other

fying a number of gentlemen of the first families, as the names of Montagu, Langham, &c., show. Somers Tracts, viii. 409.

[d] Ralph, p. 768. Harris's Lives, v. 321

for the favour of the two royal brothers. The one appealed to its acknowledged principle, while it denounced the pretensions of the holy see to release subjects from their allegiance, and the bold theories of popular government which Mariana and some other Jesuits had promulgated. The other retaliated on the first movers of the Reformation, and expatiated on the usurpation of lady Jane Grey, not to say Elizabeth, and the republicanism of Knox or Calvin.

Passive obedience.

From the era of the exclusion-bill especially, to the death of Charles II., a number of books were published in favour of an indefeasible hereditary right of the crown, and of absolute non-resistance. These were, however, of two very different classes. The authors of the first, who were perhaps the more numerous, did not deny the legal limitations of monarchy. They admitted that no one was bound to concur in the execution of unlawful commands. Hence the obedience they deemed indispensable was denominated passive; an epithet, which in modern usage is little more than redundant, but at that time made a sensible distinction. If all men should confine themselves to this line of duty, and merely refuse to become the instruments of such unlawful commands, it was evident that no tyranny could be carried into effect. If some should be wicked enough to co-operate against the liberties of their country, it would still be the bounden obligation of Christians to submit. Of this, which may be reckoned the moderate party, the most eminent were Hickes, in a treatise called Jovian, and Sherlock, in his case of resistance to the supreme powers.[e] To this also

[e] This book of Sherlock, printed in 1684, is the most able treatise on that side. His proposition is, that "sovereign princes, or the supreme power in any nation, in whomsoever placed, is in all cases irresistible." He infers, from the statute 13 Car. 2, declaring it unlawful under any pretence to wage war, even defensive, against the king, that the supreme power is in him; for he who is unaccountable and irresistible is supreme. There are some, he owns, who contend that the higher powers mentioned by St. Paul meant the law, and that when princes violate the laws we may defend their legal authority against their personal usurpations. He answers this very feebly. "No law can come into the notion and definition of supreme and sovereign powers; such a prince is under the direction, but cannot possibly be said to be under the government, of the law, because there is no superior power to take cognizance of his breach of it, and a law has no authority to govern where there is no power to punish:" p. 114. "These men think," he says (p. 126), "that all civil authority is founded in consent, as if there were no natural lord of the world, or all mankind came free and independent into the world. This is a contradiction to what at other times they will grant, that

must have belonged archbishop Sancroft, and the great body of nonjuring clergy who had refused to read the declaration of indulgence under James II., and whose conduct in that respect would be utterly absurd, except on the supposition that there existed some lawful boundaries of the royal authority.

Some contend for absolute power.

But besides these men, who kept some measures with the constitution, even while, by their slavish tenets, they laid it open to the assaults of more intrepid enemies, another and a pretty considerable class of writers did not hesitate to avow their abhorrence of all limitations upon arbitrary power. Brady went back to the primary sources of our history, and endeavoured to show that Magna Charta, as well as every other constitutional law, were but rebellious encroachments on the ancient uncontrollable imprescriptible prerogatives of the monarchy. His writings, replete with learning and acuteness, and in some respects with just remarks, though often unfair and always partial, naturally produced an effect on those who had been accustomed to value the constitution rather for its presumed antiquity than its real excellence. But the author most in vogue with the partisans of despotism

the institution of civil power and authority is from God; and indeed, if it be not, I know not how any prince can justify the taking away the life of any man, whatever crime he has been guilty of. For no man has power of his own life, and therefore cannot give this power to another; which proves that the power of capital punishments cannot result from mere consent, but from a superior authority, which is lord of life and death." This is plausibly urged, and is not refuted in a moment. He next comes to an objection, which eventually he was compelled to admit, with some discredit to his consistency and disinterestedness. "'Is the power of victorious rebels and usurpers from God? Did Oliver Cromwell receive his power from God? then it seems it was unlawful to resist him too, or to conspire against him; then all those loyal subjects who refused to submit to him when he had got the power in his hands were rebels and traitors.' To this I answer, that the most prosperous rebel is not the higher powers, while our natural prince, to whom we owe obedience and subjection, is in being. And therefore, though such men may get the power into their hands by God's permission, yet not by God's ordinance; and he who resists them does not resist the ordinance of God, but the usurpations of men. In hereditary kingdoms the king never dies, but the same minute that the natural person of one king dies, the crown descends upon the next of blood; and therefore he who rebelleth against the father, and murders him, continues a rebel in the reign of the son, which commences with his father's death. It is otherwise, indeed, where none can pretend a greater title to the crown than the usurper, for there possession of power seems to give a right." P. 127.

Sherlock began to preach in a very different manner as soon as James showed a disposition to set up his own church. "It is no act of loyalty," he told the house of commons, May 29, 1685, "to accommodate or compliment away our religion and its legal securities." Good Advice to the Pulpits.

was sir Robert Filmer. He had lived before the civil war, but his posthumous writings came to light about this period. They contain an elaborate vindication of what was called the patriarchal scheme of government, which, rejecting with scorn that original contract whence human society had been supposed to spring, derives all legitimate authority from that of primogeniture, the next heir being king by divine right and as incapable of being restrained in his sovereignty as of being excluded from it. "As kingly power," he says, "is by the law of God, so hath it no inferior power to limit it. The father of a family governs by no other law than his own will, not by the laws and wills of his sons and servants."[f] "The direction of the law is but like the advice and direction which the king's council gives the king, which no man says is a law to the king."[g] "General laws," he observes, "made in parliament, may, upon known respects to the king, by his authority be mitigated or suspended upon causes only known to him; and by the coronation oath, he is only bound to observe good laws, of which he is the judge."[h] "A man is bound to obey the king's command against law, nay, in some cases, against divine laws."[i] In another treatise, entitled the Anarchy of a Mixed or Limited Monarchy, he inveighs, with no kind of reserve or exception, against the regular constitution; setting off with an assumption that the parliament of England was originally but an imitation of the States-general of France, which had no further power than to present requests to the king.[k] Sir Robert Filmer.

These treatises of Filmer obtained a very favourable reception. We find the patriarchal origin of government frequently mentioned in the publications of this time as an undoubted truth. Considered with respect to his celebrity rather than his talents, he was not, as some might imagine, too ignoble an adversary for Locke to have combated. Another person, far superior to Filmer in political eminence, undertook at the same time an unequivocal defence of absolute monarchy. This was sir George Mackenzie, the famous lord-advocate of Scotland. In his Jus Regium, published in Sir George Mackenzie.

[f] P. 81.
[g] P. 95.
[h] P. 98, 100.
[i] P. 100.
[k] This treatise, subjoined to one of greater length, entitled the Freeholder's Grand Inquest, was published in 1679; but the Patriarcha not till 1685.

1684, and dedicated to the university of Oxford, he maintains that "monarchy in its nature is absolute, and consequently these pretended limitations are against the nature of monarchy."[m] "Whatever proves monarchy to be an excellent government, does by the same reason prove absolute monarchy to be the best government: for if monarchy be to be commended because it prevents divisions, then a limited monarchy, which allows the people a share, is not to be commended, because it occasions them; if monarchy be commended because there is more expedition, secrecy, and other excellent qualities to be found in it, then absolute monarchy is to be commended above a limited one, because a limited monarch must impart his secrets to the people, and must delay the noblest designs, until malicious and factious spirits be either gained or overcome; and the same analogy of reason will hold in reflecting upon all other advantages of monarchy, the examination whereof I dare trust to every man's own bosom."[n] We can hardly, after this, avoid being astonished at the effrontery, even of a Scots crown lawyer, when we read in the preface to this very treatise of Mackenzie, "Under whom can we expect to be free from arbitrary government, when we were and are afraid of it under king Charles I. and king Charles II.?"

Decree of the university of Oxford.

It was at this time that the university of Oxford published their celebrated decree against pernicious books and damnable doctrines, enumerating as such above twenty propositions, which they anathematised as false, seditious, and impious. The first of these is, that all civil authority is derived originally from the people; the second, that there is a compact, tacit or express, between the king and his subjects: and others follow of the same description. They do not explicitly condemn a limited monarchy, like Filmer, but evidently adopt his scheme of primogenitary right, which is, perhaps, almost incompatible with it. Nor is there the slightest intimation that the university extended their censure to such maxims of despotic power as have been quoted in the last pages.[o] This decree was publicly burned by an order of the house of lords in 1709; nor does there

[m] P. 39. [n] P. 46. [o] Collier, 902. Somers Tracts, viii. 420.

seem to have been a single dissent in that body to a step that cast such a stigma on the university. But the disgrace of the offence was greater than that of the punishment.

We can frame no adequate conception of the jeopardy in which our liberties stood under the Stuarts, especially in this particular period, without attending to this spirit of servility which had been so sedulously excited. It seemed as if England was about to play the scene which Denmark had not long since exhibited, by a spontaneous surrender of its constitution. And although this loyalty were much more on the tongue than in the heart, as the next reign very amply disclosed, it served at least to deceive the court into a belief that its future steps would be almost without difficulty. It is uncertain whether Charles would have summoned another parliament. He either had the intention, or professed it in order to obtain money from France, of convoking one at Cambridge in the autumn of 1681.[p] But after the scheme of new-modelling corporations began to be tried, it was his policy to wait the effects of this regeneration. It was better still, in his judgment, to dispense with the commons altogether. The period fixed by law had elapsed nearly twelve months before his death; and we have no evidence that a new parliament was in contemplation. But Louis, on the other hand, having discontinued his annual subsidy to the king in 1684, after gaining Strasburg and Luxemburg by his connivance, or rather co-operation,[q] it would not have been easy to avoid a recurrence to the only lawful source of revenue. The king of France, it should be observed, behaved towards Charles as men usually treat the low tools by whose corruption they have obtained any end. During the whole course of

Connexion with Louis broken off.

[p] Dalrymple, Appendix, 8. Life of James, 631. He pretended to come into a proposal of the Dutch for an alliance with Spain and the empire against the fresh encroachments of France, and to call a parliament for that purpose, but with no sincere intention, as he assured Barillon. "Je n'ai aucune intention d'assembler le parlement; ces sont des diables qui veulent ma ruine." Dalrymple, 15.

[q] He took 100,000 livres for allowing the French to seize Luxemburg; after this he offered his arbitration, and on Spain's refusal laid the fault on her, though already bribed to decide in favour of France. Lord Rochester was a party in all these base transactions. The acquisition of Luxemburg and Strasburg was of the utmost importance to Louis, as they gave him a predominating influence over the four Rhenish electors, through whom he hoped to procure the election of the dauphin as king of the Romans. Id. 36.

their base negotiations. Louis, though never the dupe of our wretched monarch, was compelled to endure his shuffling evasions, and pay dearly for his base compliances. But when he saw himself no longer in need of [illegible] he could not have been in a revenge that he permitted the publication of the secret treaty of 1670, and withdrew his pensioners; and [illegible] deeply resented both the concealment of [illegible] and the duplicity. In addition to them, he [illegible] the intrigues of the French ambassadors with his discontented [illegible]. He perceived, also, that by bringing home the duke of York from Scotland, and [illegible] him in defiance of the test act, to the privy council, he had made the presumptive heir of the throne, possessed as he was of singular steadiness and attention, too powerful [illegible]. These reflections appear to have distressed his mind in the latter months of his life, and to have produced that remarkable private reconciliation with the duke of Monmouth, through the influence of lord Halifax, which, had he lived, would very probably have displayed one more revolution in the [illegible] policy of this reign.[1] But a death so sudden and unprovided for as to excite suspicions of poison in some most nearly connected with him, gave a more decisive character to the system of government.[2]

[1] Lady Russell, April 18, 14. [illegible] Mazure, Hist. de la Revolution de 1688, tom. i. p. 349. 8vo. This is confirmed by other evidence, the very curious notes found in the duke of Monmouth's pocket-book, when he was taken after the battle of Sedgemoor, and published in the appendix to Welwood's Memoirs. These notes would rather seem to have been [illegible] of their authenticity than [illegible] I know, has been produced, they [illegible] of it in themselves; and it [illegible] possible that, after the revolution, [illegible] may have obtained them [illegible] State's Office.

[2] [illegible] by Mr. Fox, as a tradition [illegible] of Richmond's family, that [illegible] Portsmouth believed [illegible] poisoned. This [illegible] in a letter read on the [illegible] from a relation of the [illegible] see Jan. 1815. [3] The duchess of Portsmouth herself, at present here, advises a friend of mine, as I am informed, by private letter to expose that the late king James had poisoned his brother Charles; it was not expected that after so many years retirement in France she should come hither to revive that vulgar report which at so critical a time cannot be for any good purpose. State Trials, xv. 648. It is almost needless to say that the suspicion was wholly unwarrantable. I have since been informed, on the best authority, that Mr. Fox did not derive his authority from a tradition in the duke of Richmond's family, that of his own mother, as his editor had very naturally conjectured, but from his father, the first lord Holland, who, while a young man travelling in France, had become acquainted with the duchess of Portsmouth.

END OF THE SECOND VOLUME.

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